

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1654

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

IN THE MATTER OF JERRY LANGELLA,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

APPENDIX TO BRIEF FOR
APPELLANT LANGELLA

GUSTAVE H. NEWMAN
Attorney for Appellant Langella
522 Fifth Avenue
New York, New York 10036
Telephone: (212) MU 2-4066

PAGINATION AS IN ORIGINAL COPY

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DOCKET

TITLE OF CASE

IN RE JERRY LANGELLA, A WITNESS
BEFORE THE SPECIAL SEPTEMBER,
1972 GRAND JURY.

ATTORNEYS

For Plaintiff:

GUSTAVE H. NEWMAN

ESQ.

522 Fifth Ave., N. Y., N. Y.

Tel: MU-2-4066

100

For Defendant:

BASIS OF ACTION:

JURY TRIAL CLAIMED

ON

[illegible]

ABSTRACT OF COSTS

[illegible]

DATE	FILINGS--PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
4-25-74	NOTICE OF MOTION FILED for an order granting the following relief: (1) Reargument of an application made before the Hon. John F. Dooling on April 17, 1974 for an in-camera examination of certain electronic interception orders, etc. (returnable	1
4-25-74	BY DOOLING, J. ORDER FILED (dated April 17, 1974) that Jerry Langella is in direct contempt of this Court for his failure to answer questions before the said Grand Jury, etc.	2
4-25-74	NOTICE OF APPEAL FILED (from order dated April 17, 1974)	3
4-25-74	Copy of Notice of appeal was on on this day mailed to Clerk, U.S.C.A. <i>mlw</i>	
4-25-74	Instructions re preparation of Index, etc., were on this day handed personally to GUSTAVE H. NEWMAN, ESQ., together with Forms C & D. <i>mlw</i>	
5-3-74	Before DOOLING, J. Case called. Motion argued. MOTION DENIED. (See order by DOOLING, J., dated May 3, 1974 endorsed upon the back of Notice of Motion, etc.)	
5-9-74	All documents in this matter together with a Certified copy of Docket Entries were on this day handed personally to Ms Joan Gill, for filing in the U.S.C.A. (Receipt attached to Index, etc.)	
5-13-74	Copy of Index filed with acknowledgment endorsed thereon by Clerk, U.S.C.A. re receipt of documents, etc.	4
5-15-74	Letter of Gustave H. Newman, Esq., filed dated May 14, 1974 addressed to DOOLING, J., etc.	5
5-28-74	Letter of Gustave H. Newman, Esq., filed dated May 22, 1974 addressed to DOOLING, J. re client, Jerry Langella's son, etc.	6
6-20-74	Minutes of Hearing filed dated May 3, 1974	7
6-26-74	Notice of motion for an order to set aside order of 4-17-74 finding Jerry Langella in contempt etc. filed.	8
6-26-74	Before DOOLING, J.: Case called. Attorneys for both parties present. MOTION TO SE ASIDE ORDER adjudicating LANGELLA in contempt and to admit Langella to bail - argued. DECISION RESERVED.	
6-28-74	BY DOOLING, J. ORDER FILED ENDORSED UPON THE BACK OF NOTICE OF MOTION (document #8) filed June 26, 1974) ORDERED that THE MOTION FOR REARGUMENT is DENIED. (See Document #8 for order)	
7-8-74	Letter from Gustave H. Newman dtd 7-1-74 filed.	9
7-12-74	By DOOLING, J. - Memorandum & order reaffirming the decision on motion for reargument etc. filed.	10
7-18-74	Notice of Motion filed for an order (1) rearguing the determination made on April 17, 1974 that the witness was in contempt, etc. (returnable date to be fixed by the Court)	11

CIVIL DOCKET

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
7-12-74	NOTICE OF APPEAL filed. Copy mailed to C of A			11- ^a
7-22-74	Letter of Gustave H. Newman, Esq., re documents, etc. (letter dated July 2, 1974, addressed to BARTELS, J.)		12	
7/30/74	By Dooling, J. - Order (endorsed on reverse of paper #11) denying motion for reargument filed.		--	
7-31-74	Record on appeal certified and mailed to C of A.			
8/5/74	Certified copy of index to record on appeal acknowledging receipt of record by C of A filed		13	
8-21-74	Notice of Motion filed for an order granting the witness, Jerry Langella a furlough and for such other and further relief, etc. (time and date to be set by a Judge)		14	
8-28-74	Before DOOLING, J. Case called. Motion re furlough, etc., ARGUED. SETTLE ORDER. (See notation by DOOLING, J. on back of Notice of Motion- Document #14)			
9-12-74	BY DOOLING, J. Order filed that the witness be taken in the company of Federal Correction Officers from the Federal House of Detention, etc., to be examined by Dr. Andres Rodriguez etc. (P/C mailed to attys.)		15	
9-16-74	BY DOOLING, J. ORDER FILED that the witness be taken in the company of U.S. Marshals from the Federal House of Detention, etc., Sept. 16, 1974 for Xrays, etc. (P/C mailed to attys.)		16	
9-20-74	Certified copy of order returned and filed with the U.S. Marshal's return thereon. Defendant taken to Hospital, etc.		17	
9-24-74	Notice of motion filed for an order pursuant to Title 28, Sec. 2255, U.S.C., releasing from custody the witness JERRY LANGELLA, ETC.		18	
9-11-74	Before DOOLING, J. Motion argued. MOTION DENIED.			
9-15-74	BY DOOLING, J. Order filed (dated Oct. 11, 1974) -See order endorsed upon the Notice of Motion (back) bearing date Sept. 20, 1974, etc. "The witness may not be released. IT IS SO ORDERED" (See order) Copies of order were mailed from the chambers of JOHN F. DOOLING, JR., U.S.D.J.		---	
9-17-74	NOTICE OF APPEAL FILED (from order entered Oct. 11, 1974) with proof of service thereon, etc.		19	
9-17-74	Copy of Notice of Appeal was on this day mailed to Clerk, U.S.C.A.			

74-C-638 IN RE JERRY LANGELLA, ETC.

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMCLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
10-17-74	Instructions re record were on this day mailed to Gustave H. Newman, Esq., 522 Fifth Ave., N.Y., N.Y., 10036, together with forms C and D for U.S.C.A. <i>mb</i>			
10-17-74	Copy of Notice of Appeal was on this day mailed to Witness JERRY LANGELLA, Federal House of Detention, West St., N.Y.C., N.Y. <i>mb</i>			
11-6-74	Notice of motion filed for an order granting (1) Ordering that the above-named witness be transported at his own expense in the company of U.S. Marshals directly to a medical center, etc. (date to be fixed by DOOLING, J.)			20
11-8-74	Minutes of the stenographer filed dated Oct. 11, 1974.			21
11-11-74	Notice of motion filed with proof of service thereon, etc., for an order granting the following relief: (1) An order discharging the Special Grand Jury empaneled on Sept. 19, 1972 to serve for 18 months and extended on March 12, 1974 to serve an additional 6 months from March 19, 1974, etc., (date to be fixed by DOOLING, J.)			22
11-13-74	BY MISHLER, CH. J. MEMO., FILED that this matter be assigned to DOOLING, J. (See Memo dated Nov. 12, 1974 attached to motion papers dated Nov. 5, 1974)			23
11-13-74	Before DOOLING, J. Case called. Petitioner and counsel present. Defendant's motion to obtain transfer to a Medical Center, etc. argued. DECISION RESERVED. Defendant's motion to discharge the Grand Jury, argued. Petitioner voluntarily left in midst of the argument on second motion during a recess. DECISION RESERVED.			
11-18-74	BY DOOLING, J. ORDER FILED. ORDERED that the motion to discharge the Special Grand Jury empaneled September 19, 1972, is DENIED. (See order)			24

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X
5 In the Matter :
6 of :
7 Grand Jury :
8 JERRY LANGELLA :
9 -----X

10 United States Courthouse
11 Brooklyn, New York

12 April 17, 1974
13 11:10 o'clock a.m.

14 B e f o r e :

15
16 HONORABLE JOHN F. DOOLING, JR., U.S.D.J.
17
18
19
20
21
22

23 FRANCES KARR
24 ACTING OFFICIAL COURT REPORTER
25

Appearances:

EDWARD J. BOYD V, ESQ.,
United States Attorney
for the Eastern District of New York

BY: ROBERT Del GROSSO, ESQ.,
Assistant United States Attorney

GUSTAVE H. NEWMAN, ESQ.,
Attorney for Jerry Langella

1 - THE COURT: Yes Mr. Del Grosso.

FK:ss
laml

2 MR. DEL GROSSO: Your Honor, the witness is
3 Jerry Langella. Mr. Langella was sworn. He gave his
4 name and address and I asked him if he was represented
5 by counsel and I put that on the record as to counsel
6 and he asked to read a statement. In that statement
7 are questions I think your Honor has seen before con-
8 cerning electronic surveillance and at this point I
9 imagine Mr. Newman would like to make his application.
10 He wanted to get this out of the way first.

11 MR. NEWMAN: If your Honor please, at this
12 time I would like to offer up the statement, copy of
13 which Mr. Langella read before the grand jury.

14 MR. DEL GROSSO: Your Honor, I would say this
15 application is premature in that no questions have
16 been put to the witness at all. In Egan and Gelbart
17 cases it is after immunity has been granted. No
18 immunity has been granted in this case although there
19 will be.

20 There is a claim, really not a claim as to
21 the illegality of the electronic surveillance. There
22 is a claim of finding out whether or not it is legal
23 or illegal and this really can be settled by a
24 previous matter, United States versus Alfonse Persico.
25 In fact, Judge Judd found that these orders, these

1 very same electronic surveillance we are talking about
2 in this matter they were valid orders and that the
3 Second Circuit Court of Appeals found they were valid
4 orders. Now we are going through the same thing and
5 I really believe it should not be gone through now.

6 MR. NEWMAN: Before this witness and I trust
7 he is being brought here as a witness, although I
8 have heard nothing --

9 MR. DEL GROSSO: He is a witness.

10 MR. NEWMAN: Before this witness can decide
11 whether he should or should not assert any fifth
12 amendment privilege he is asking a question by that
13 statement. He is not questioning the validity of
14 any orders, he is asking the question, has my voice
15 been recorded. I think Egan and Gelbart give him that
16 right. They do not go into the question of whether it
17 is premature prior to the assumption of a fifth amend-
18 ment privilege.

19 The only thing Egan and Gelbart dealt with on
20 the fifth amendment privilege, Judge, was the question
21 as to whether the fellow was in contempt if after
22 asserting his fifth amendment privilege or her fifth
23 amendment privilege in the case of Egan, she was
24 conferred or granted the use of immunity, whether she
25 could still assert the electronic surveillance as to

1 a contempt proceeding.

2 All we are asking Mr. Del Grosso in this state-
3 ment, all the witness is asking is to be advised
4 whether or not his voice was electronically inter-
5 cepted and whether that interception was the basis
6 for this grand jury proceeding.

7 It is significant for him to determine whether
8 he should assert his fifth amendment privilege or not
9 assert his fifth amendment privilege. I do not see
10 how it can be premature.

11 MR. DEL GROSSO: If I may, I say if I believe
12 my voice has been recorded I therefore respectfully
13 ask to be taken before a District Court Judge to be
14 asked whether my conversation has been electronically
15 intercepted. How could you determine that, I mean
16 know beforehand there have been interceptions.

17 THE COURT: He wants to know whether his voice
18 has been intercepted and whether that is the founda-
19 tion of the questioning.

20 His voice has been intercepted but that is not
21 a question.

22 THE COURT: That is datum 1. Does the
23 interrogation which he plans to proceed with use as
24 the basis the transcription or recording of his own
25 voice.

1 MR. DEL GROSSO: Some of the questions will.

2 THE COURT: I do not know where that gets us,
3 but as long as we have that. Now is a second
4 suggestion, and perhaps at this point it becomes im-
5 material, do you mean to use recordings of his voice
6 that were made on a New York State Interception Order.

7 MR. DEL GROSSO: I have none, I have ab-
8 solutely none, your Honor. I never received any
9 transcriptions, any tapes, and I have no conversations
10 with any State authorities concerning it. I may add
11 any conversations I have had with any federal author-
12 ities I have asked that question. When I said
13 federal authorities, I mean federal investigative
14 agencies I have asked such questions.

15 THE COURT: You are asking them have we any
16 State stuff.

17 MR. DEL GROSSO: Right, and I never received
18 any affirmative reply, it has always been no.

19 THE COURT: That clears up that much of the
20 underbrush anyway. He has said two things at this
21 point. We do not plan to seek an indictment against
22 Mr. Langella, that we do want his testimony.

23 MR. DEL GROSSO: Yes, your Honor.

24 MR. NEWMAN: And I take it then that we also
25 have on the record the fact that the questions to be

1 asked of Mr. Langella are a part or in whole based
2 upon electronic interception.

3 THE COURT: In part yes.

4 MR. NEWMAN: I would therefore ask and this I
5 acknowledge I may be premature on until questions are
6 posed -- I would therefore ask so I am not considered
7 to have waived that right, that if these interceptions
8 are predicated upon any electronic interception based
9 on a Court Order, that the Court Order be submitted
10 to your Honor at least in camera for your Honor to
11 examine them under the authority of Persico.

12 THE COURT: Well, what do you say.

13 MR. DEL GROSSO: I would disagree to that,
14 your Honor. I am very much against it. First of all,
15 the statute and the legislative history --

16 THE COURT: What did the footnote in Gelbart
17 say.

18 MR. DEL GROSSO: The footnote in Gelbart --

19 MR. NEWMAN: Calendra, your Honor.

20 THE COURT: Yes.

21 MR. NEWMAN: The footnote in Calendra I think
22 you are making reference to seems to indicate as far
23 as Calendra is concerned, it was not intended to
24 deal with those cases where the party retains a
25 statutory or constitutional right. They are only

1 dealing with search and seizure. By its language
2 they seem to exclude 2515 of Title 18. Is that the
3 reference your Honor has.

4 THE COURT: Yes, something like that. That is
5 why I asked to have my recollection refreshed and
6 then it referred to Gelbart.

7 MR. DEL GROSSO: 2515 is subject to 2517 and
8 2518, where they start talking.

9 THE COURT: About something which I disagree
10 with, which you know.

11 MR. DEL GROSSO: I am looking at the legislative
12 history. I look at the statute and at the Court cases.

13 THE COURT: That is the point I did have to
14 decide in an earlier case.

15 MR. NEWMAN: Yes your Honor, you decided in
16 Viggria, Assaro -- in any event the strike force took
17 an appeal to the Circuit Court in connection with that
18 which we are arguing April 26th and I served and filed
19 my brief, I might add in defense of your Honor's
20 position which is a rare pleasure, just yesterday.

21 THE COURT: A hopeless defense.

22 MR. NEWMAN: I hope not, your Honor, I hope it
23 is a hopeful defense.

24 In any event, I think within the language of
25 the case that they constantly rely on, within the

1 language of Persico, the procedure I am requesting is
2 in effect suggesting because they seem to commend
3 Judge Judd in the Persico situation for having at
4 least examined the Order in camera. I cannot see how
5 anybody is prejudiced by a submission to your Honor
6 in camera of that material.

7 THE COURT: As you know, my own approach in
8 these things is simply to ask whether this recording
9 or recordings of Mr. Langella's voice were recordings
10 that were made under an Order of the Judge of this
11 Court.

12 MR. DEL GROSSO: Yes your Honor.

13 THE COURT: And was the order still in effect
14 at the time of the interception.

15 MR. DEL GROSSO: Yes your Honor.

16 THE COURT: And were the requisite reports made
17 and filed after the interception.

18 MR. DEL GROSSO: Yes your Honor.

19 THE COURT: Was the inventory served.

20 MR. DEL GROSSO: The inventory was served. I
21 went over that with Mr. Newman today and I do not
22 think that the inventory --

23 THE COURT: Was it served on Mr. Langella.

24 MR. DEL GROSSO: Mr. Langella, I will bring
25 him to the Court and describe how we attempted to

1 serve him at the particular address he gave to the
2 grand jury today.

3 THE COURT: No, all you had to do was in good
4 faith.

5 MR. DEL GROSSO: They were sent and refused.
6 As to the inventory itself, I do not believe if the
7 inventories were not sent, that is not a question
8 here because the inventory, the first inventory there
9 was a discrepancy of 30 days. Now I understand what
10 that discrepancy is. As I explained to Mr. Newman,
11 all you have to do is write things down and think a
12 little harder, which I did. As the statute specific-
13 ally states, it is 90 days after the determination of
14 the order or extension thereof. What I did was
15 actually send out two inventories when I only had to
16 send out one. So all inventories and all reports have
17 been made. That is on record with the Clerk, they
18 are filed with the Clerk, your Honor.

19 THE COURT: My view of the matter is that if
20 it has already been passed on by a Judge of this Court
21 then something better than an in camera inspection
22 has already occurred, that is if they have been
23 solemnly passed upon by a Judge of this Court and the
24 practice of this Court, and I suppose universally
25 that means, that after the affidavits were read by the

1 Judge in the presence of the affiants, and that I
2 think almost all of the Judges interrupt their
3 reading to ask the questions and get explanatory
4 statements, and then swear th affiants to the
5 affidavits and so indicate on the original affidavits
6 before the Order is signed. For me to repeat that
7 work is simply carrying coals to Newcastle here, it
8 has been done.

9 MR. NEWMAN: With one or two minor differences,
10 if your Honor please. For example, I would inquire
11 through your Honor whether if since I gather from Mr.
12 Del Grosso there were extensions of the original
13 Order based on his last statement concerning the
14 notices, I would ask your Honor to examine it with
15 this in mind. If there came a point during the first
16 interception when Mr. Langella's voice was recorded,
17 whether in fact the subsequent amending orders in-
18 cluded Mr. Langella's voice included as someone being
19 recorded. I recognize I have the Kahn case against
20 me from the United States Supreme Court but I would
21 submit to your Honor that this is just one area that
22 obviously the sitting Judge who issued the order could
23 not have taken into consideration or would not have
24 been brought to his attention as specifically as that.

25 THE COURT: I recollect that on the renewal

1 or resumption Order it is not usual to mention every
2 voice heard but only to name those people not
3 originally named as against whom in some form an
4 extension of the scope of the order is sought or where
5 an addition of that person's name lends some support
6 to the foundation for seeking the further Order.

7 MR. DEL GROSSO: I may say in line with your
8 Honor's remarks there is no requirement that the
9 government has to put in whose voice was picked up as
10 long as there is probable cause.

11 THE COURT: I would not think so, I would hope
12 we would be spared that.

13 MR. DEL GROSSO: If we take it one step further,
14 what he wants to hear is what we have, what is on the
15 tapes and wants to hear everything on the tapes and
16 whether or not he agrees with what is on the tapes and
17 then maybe he will testify.

18 THE COURT: I do not think we have to look into
19 the heart of Mr. Langella or Mr. Newman's heart.

20 (Continued on next page.)

1am3

1 MR. Del GROSSO: I am not looking into his
2 heart, I am making an assumption here.

3 MR. NEWMAN: I do not think that is so excep-
4 tional if we look into it for just a moment. We have
5 from Mr. Del Grosso an indication that this gentleman
6 has been subpoenaed here as a witness. I have parti-
7 cipated, perhaps not as many times as your Honor has,
8 but I have seen many many occasions where government
9 witnesses who are brought here as government witnesses
10 have had their recollection refreshed by the use of
11 documents, by having tapes played to them, so I do
12 not think if I suddenly get a brainstorm, and I thank
13 Mr. Del Grosso for suggesting it to me, that since
14 Mr. Langella is brought here as a government witness,
15 I see nothing wrong and I question now the good faith
16 of Mr. Del Grosso in not being willing to play the
17 tapes to this man and I am becoming suspicious, Judge,
18 although I have a suspicious nature generally, I am
19 becoming suspicious perhaps the reason Mr. Langella
20 is being brought here is to whipsaw him between what
21 his recollection is and what in fact he may have said
22 in an unguarded moment in the privacy of some room,
23 being unaware it was being recorded and perhaps to
24 set him up for either contempt or perjury.

25 I would call your Honor's attention and Mr.

1 Del Grosso's attention to the fact that despite the
2 broad power of the Grand Jury there is a case out of
3 the Eighth Circuit called Brown versus United States,
4 which seems to decry this sort of procedure.

5 I would ask through the good offices of your
6 Honor to inquire whether in fact that is the purpose
7 of bringing Mr. Langella here.

8 MR. Del GROSSO: That is not the purpose.

9 MR. NEWMAN: Then I do not see the reason why
10 the tapes shouldn't be played to him to refresh his
11 recollection so he can in fact give good substantive
12 testimony.

13 MR. Del GROSSO: I see plenty of reason. It
14 will disturb and destroy the investigation going on.
15 I believe it will sufficiently refresh Mr. Langello's
16 recollection through questioning, if necessary, if
17 his recollection needs refreshing. I do not see in
18 any way, shape or form --

19 THE COURT: What Mr. Newman is suggesting is
20 that there are cases in which when they are finally
21 fully-developed as perjury indictments, the judge who
22 after all is not the trier of the facts most of the
23 time forms a judgment that the game has not been played
24 according to what is popularly known as the rules of
25 cricket. That indeed the prosecutor may have been

1 interrogating with a view to produce a contradiction
2 between what the Grand Jury witness was telling the
3 Grand Jury and what the prosecutor knew he should
4 have said on the basis of an overheard conversation
5 on the wire.

6 What Mr. Newman suggests is that the risk of
7 a government lawyer being subjected to that unkind
8 suspicion of trying to "entrap" a Grand Jury witness
9 into perjury would be to tell the witness what he is
10 known to have said to use that as the foundation for
11 further questioning so that the whole matter may
12 proceed in a candid spirit and would advance the
13 inquiry without needlessly exposing the witness to
14 a risk of innocent contradiction of his own earlier
15 words in circumstances in which it might be impossible
16 for him to demonstrate that it was mere mistake, in-
17 advertence, forgetfulness, or something other than
18 a calculated attempt to mislead.

19 MR. Del GROSSO: Mr. Langella is not afforded
20 any greater protection than any other Grand Jury wit-
21 ness, who in this case will be granted immunity. But
22 the Government is not trying to "set up" Mr. Langella.
23 This is an investigation, it is a viable government
24 investigation where we are attempting to find out just
25 what is going on. Mr. Langella was in a particular

1 establishment which was subject to electronic surveil-
2 lance and we know he was there and certain things
3 happened. There are certain things we do not know
4 that happened. He is a witness we will call just
5 as anyone else and I wish to find out exactly what
6 went on. That is what I am trying to do. I am
7 trying to find out what happened.

8 THE COURT: I think the answer of the law,
9 generally speaking, has been that the Government does
10 not have to take witnesses before the Grand Jury into
11 its confidence and that it is important for Mr. Langella
12 to realize that if he must testify to make a real
13 good-faith effort to tell the truth, the whole truth,
14 and nothing but the truth, which is what he is sworn
15 to do. And I am sure you will be able to advise him
16 on the importance of not inventing recollection simply
17 because somebody seems to expect him to know or it
18 seems in his interest to know or that he knows some-
19 thing different from what he does know.

20 MR. NEWMAN: Your Honor, I know we will be
21 back to burden you during the course of a day that
22 I know you have a trial on. I must confess I believe
23 what we have here based on what Mr. Del Grosso has
24 said, a situation which falls within Brown versus U.S.
25 245 F. 2d 459. I must respectfully submit to the Court

1 in my considered judgment what we have here is really
2 an attempt to establish a basis for indicting Mr.
3 Langella for perjury, because I think we would all
4 be hard pressed, irrespective of our training, irre-
5 spective of our education, to really account for our
6 conversations of yesterday, let alone over any extended
7 period of time. I recognize the burden I am up against
8 but I would ask consideration of that particular
9 decision and the real purpose of Mr. Langella being
10 subpoenaed here, in light of a simple request in the
11 confines of the Grand Jury information that he is
12 going to be questioned about be read or played to
13 him to refresh his recollection and make him more
14 useful as a witness, if in fact he is seriously sought
15 as a witness.

16 MR. Del GROSSO: He is sought as a witness,
17 your Honor.

18 THE COURT: I think, Mr. Newman, it is not a
19 question of how you would proceed if you were in Mr.
20 Del Grosso's position and had an avowed purpose, because
21 the experience of many prosecutors has been that such
22 trust and candor has all too often been betrayed.
23 Whether that is a sound judgment or forms a good basis
24 of procedure or not, I cannot say. That it is an abuse
25 of his discretion or an impropriety to ask Mr. Langella

1 to testify without playing the recordings to him, it
2 is on notice that these conversations have been to
3 some extent overheard but that which would be involved
4 to disclose to him is the mistrust implicit in Mr.
5 Del Grosso, in what he said is a justifiable mistrust
6 and very simple to understand.

7 You can advise him on the Fifth Amendment rights.

R.2 ss 8 MR. NEWMAN: If your Honor please, the witness,
9 Mr. Langella, read a statement asserting his Fifth
10 Amendment privilege, and as a result of it, I was
11 shown a document by Mr. Del Grosso, which is a conformed
12 copy of an order by Judge Bartels, in which, if I may
13 hand it up and we can mark it -- witness's exhibit,
14 I guess?

15 THE COURT: Witness's Exhibit 1, so marked.

xxx 16 (So marked.)

17 THE CLERK: I'm sorry, this will be witness's
18 Exhibit 2.

19 MR. NEWMAN: If your Honor please, I assume --
20 and this is the first time in my experience I had an
21 in abstentia immunity without the witness being
22 present and being told by the Court that he has
23 immunity. I'm confirming on the record we have this
24 copy of order.

25 I asked Mr. Del Grosso the scope of this

1 investigation. I was advised that the investigation
2 and the scope of the questions to be put to Mr. Langella
3 for violation of Title 18, Section 1962 and a conspiracy
4 to violate that -- was that correct?

5 MR. Del GROSSO: Yes.

6 THE COURT: 62? I thought it was 51.

7 MR. Del GROSSO: The Hobbs Act -- this is the
8 racketeering influence into legitimate businesses.
9 I think it's a 1970 amendment, your Honor.

10 THE COURT: You're familiar with it?

11 MR. NEWMAN: Not the exact language. It kind
12 of obviates my next inquiry to the Court, which would
13 be whether this is one of the sections within the
14 immunity, et cetera. I don't want to waive any argument
15 I have by its broad scope. It's included within 6002.

16 THE COURT: They're in there, too. They're
17 way in the back, of course, very close to the index
18 and go over.

19 MR. NEWMAN: If your Honor please, as a result
20 of this, I guess the next step, really, is the indica-
21 tion to Mr. Langella he has been granted immunity
22 according to the order of Judge Bartels.

23 THE COURT: I think he has to be clear as to
24 what he has been granted.

25 MR. Del GROSSO: On the record, your Honor,

1 the Grand Jury record, I told the witness that he was
2 granted immunity. Anything he testified to cannot
3 be used against him in a criminal action. Any leads
4 that his testimony gave could not be used against
5 him in a criminal action..

6 If he perjured himself, of course, he's subject
7 to the perjury statutes and if he refuses to testify,
8 he can be cited for contempt.

9 THE COURT: I think the one thing, Mr. Langella,
10 you want to be clear, is that under the order which
11 has been marked here as Exhibit 2, you have no alter-
12 native now except to testify, because the order
13 directs you to answer all of the questions that
14 are addressed to you by the Grand Jury through Mr.
15 Del Grosso and you have to produce the books and
16 records and papers that are called for.

17 Now, under the statute, since you have pleaded
18 your privilege and have been directed to answer,
19 notwithstanding your privilege, none of the testimony
20 or other information that is derived from the ques-
21 tioning and from this Grand Jury proceeding influence
22 or any other information directly or indirectly
23 derived from testimony and other things which you
24 may be required to produce to the Grand Jury can be
25 used against you in any criminal case except for a

1 prosecution for perjury in that room or giving a
2 false statement or of course for disobeying the order.

3 Is that clear enough to you? In other words,
4 your testimony is involuntary, given under this order,
5 and therefore it cannot be used against you or can
6 anything that your testimony leads them to be used
7 against you.

8 Is that clear?

9 MR. LANGELLA: Yes, your Honor.

10 MR. Del GROSSO: For the record, your Honor,
11 the Grand Jury has not ordered Mr. Langella to testify
12 because I gave -- the immunity was read to him. At
13 that point he wished to see --

14 THE COURT: He is ordered now, the minute his
15 order is put into effect, as it now is.

16 MR. Del GROSSO: Yes, sir.

17 THE COURT: The order says "Ordered that Jerry
18 Langella answer all questions directly put to him by
19 the aforesaid Grand Jury." The Grand Jury questions
20 through the United States Attorney.

21 MR. NEWMAN: I don't want to go into anything.
22 This is the Grand Jury, Judge.

23 (Grand Jury enters courtroom.)

24 MR. NEWMAN: They're all present here.

25 THE COURT: I take it that you're here for

1 another purpose?

2 MR. NAFTALIS: For the handup.

3 (Said Grand Jury leaves courtroom.)

4 MR. NEWMAN: Now, if your Honor please, I've
5 been furnished in the interim with a copy of the
6 order which impaneled the special Grand Jury and an
7 order which purports over the signature or under the
8 signature of the Chief Judge, to extend the life of
9 this Grand Jury. I would respectfully move at this
10 time to vacate the subpoena served upon my client
11 on the grounds, sir, that this Grand Jury, as it's
12 impaneled under this order, its term has expired and
13 it's not an existing body. There's no basis for this
14 proceeding.

15 I would like to offer into evidence as Witness's
16 Exhibit 3, if you would, sir.

17 THE CLERK: So marked as Exhibit 3, a document.

18 (So marked.)

19 MR. NEWMAN: Your Honor, it's a 6-A Grand Jury,
20 under Section 6-A, Federal Rules of Criminal Procedure.
21 That statute states the Grand Jury's life is only 18
22 months and there are no exceptions.

23 THE COURT: I think that you would find this
24 is also a special Grand Jury under Public Law 91-452
25 and so recites. You see, our form of order here treats

1 6-A as sort of an incomplete rule. All 6-A does is
2 authorize the Court to summon one more Grand Jury
3 at the time when the public interest requires it.
4 The specific authority for impaneling a special Grand
5 Jury is Chapter 216 of Title 18, Section 3331.

6 MR. NEWMAN: 3331 gives them the power to set
7 up a Grand Jury for 36 months. As I read it and, of
8 course, there are not too many cases on the subject,
9 it's a case, your Honor, decided involving the FHA,
10 where an indictment was dismissed.

11 THE COURT: That was a nonstatutory Grand Jury
12 because -- it was complicated. At the time that Grand
13 Jury was formed, I think it was formed as a special
14 Grand Jury under Rule 6-A only and could only have
15 been under 6-A because there was already in existence
16 a special statutory Grand Jury and a second one could
17 not be set up without specific findings, which had not
18 been made.

19 This one is a special Grand Jury and with certain
20 powers and also with powers of life extension. It
21 would -- its normal term would have been from September
22 19 to September 19 plus six. It's eighteenth month
23 would have been in March, March 19, give or take a
24 while.

25 I take it that would have been the second order

1 at that time?

2 MR. Del GROSSO: There was an order extending
3 the term of the Grand Jury.

4 THE COURT: That usually contains a specific
5 recital.

6 MR. NEWMAN: My thrust was that the order that
7 originally set up this Grand Jury doesn't give it the
8 life under the statute by the words "Special Grand
9 Jury."

10 THE COURT: But by the invocation of the
11 statute.

12 MR. NEWMAN: By the invocation of the general
13 blanket, Title 17

14 THE COURT: Title 1 of that law is Chapter 216,
15 which is the Special Grand Jury title and is devoted
16 wholly to the Special Grand Jury.

17 MR. NEWMAN: I thought the criterion was the
18 Rackets Grand Jury, Judge, because if I remember
19 correctly, the legislative history that was around
20 this was part of the organized crime statutes.

21 THE COURT: I don't suggest Mr. Del Grosso is
22 an organized criminal, but his job is to deal with
23 those matters which are generally considered as having
24 enough probability of connection with organized crime
25 to be assigned to, including self-assigned to the unit

1 of which he's part and I made the mistake, but I
2 think broadly, it's only your office, Mr. Dillon's
3 office that presents material to this Grand Jury.
4

5 MR. Del GROSSO: We're the only ones, your
6 Honor. Occasionally, if the United States Attorney
7 may have something --

8 THE COURT: A related thing.

9 MR. Del GROSSO: -- related, and they come in.

10 THE COURT: Like this one that was just handed
11 up.

12 MR. Del GROSSO: That's the only time I know
13 of that the United States Attorney has used.

14 MR. NEWMAN: I trust then my objection is over-
15 ruled?

16 THE COURT: Yes, I think so, this time. I
17 think it's wise to make sure Mr. Langella is really
18 bound to testify. I don't know what happens if it
19 turns out --

20 MR. NEWMAN: Unfortunately, we'll be seeing you
21 again.

22 THE COURT: I hope not. It would be so nice
23 if someone would come to Mr. Del Grosso's help and
24 just give him the information he needs to move ahead.

25 MR. NEWMAN: The difficulty with that, Judge,
is that with this franchise, so much of the criminal
bar wouldn't be happy, so we couldn't let that happen.

MP:ss
3am

1

MR. DEL GROSSO: Your Honor, at this time the government will make an application to hold Mr. Langella in contempt pursuant to Title 28 Section 1826.

He has refused to answer the question put to him by the grand jury after he had been advised by you to answer.

He has read a statement which I presume Mr. Newman -- I know Mr. Newman will read it into the record.

Perhaps we can go forward with that now.

MR. NEWMAN: At this time, I would like to indicate for the record, so we have it clear, that Mr. Langella did not refuse to answer questions. Mr. Langella read a statement which I prepared, and the statement, if I may, will take a minute of your time, and reads as follows:

"I have previously testified before the grand jury in New York County."

So the record is clear, I gave a copy of that statement to Mr. Del Grosso.

"Some of the questions I have been asked here today have been asked of me before that grand jury. Prior to my testifying before the New York County grand jury, I am advised that I was granted transactional immunity. I have been advised and believe

1 that since I was told I received transactional
2 immunity from the New York County grand jury, any of
3 the material that I testified to in that proceeding
4 cannot be used before this grand jury. I am advised
5 that this is based on the case of Murphy against
6 Waterfront Commission. I therefore respectfully re-
7 quest that I be taken before a District Court Judge
8 and that a hearing be held to determine whether this
9 proceeding or any of the questions are based upon
10 material for which I received transactional immunity.
11 I make this request on the authority of United States
12 against Hockenberry and United States against
13 McDaniels."

14 I didn't put the citations into the statement
15 that Mr. Langella read.

16 I am prepared to give the Court those citations.

17 Obviously, I gave them to Mr. Del Grosso.
18 Suffice it to say, Judge, I have a copy of this testi-
19 mony that Mr. Langella gave before the New York County
20 grand jury on my person. I would submit to your Honor
21 that the cases that I am relying on, and by the way
22 this statement is not complete, it omits the Kastiger
23 case, which is 406 U.S. -- well, 460 is the page of
24 the quote. I don't know the first page of the cita-
25 tion. 460. Which indicates that when somebody

1 result of the grand jury proceeding when Mr. Langella
2 received transactional immunity. I think it is
3 tainted under all of the cases I cited, your Honor.

4 MR. DEL GROSSO: If I may, your Honor, I put
5 the questions to Mr. Langella one after another and I
6 would take this to be a refusal to testify. I would
7 like to get in the fact of the immunity itself. Mr.
8 Newman is correct when he cites Murphy and Hockenberry
9 and McDaniels. These are situations where there is a
10 criminal proceeding, where the government used the
11 testimony of the individual against him in a criminal
12 proceeding.

13 This is not a criminal proceeding, this is a
14 grand jury and the individual is here as a witness.

15 I would point out the pertinent part of 18
16 United States Code 6002 where it states:

17 "But no testimony or other information com-
18 pelled under the order or any information directly
19 or indirectly derived from such testimony or other
20 information may be used against the witness in any
21 criminal case, except a prosecution or perjury, giving
22 a false statement, or otherwise failing to comply
23 with the order."

24 This is a different situation. This is a
25 grand jury.

1 If I could relate back to Title 18 United
2 States Code, Section 2514, where this was the trans-
3 actional immunity -- I just mentioned 6002 -- trans-
4 actional immunity uses the same wording. Again, if
5 I may:

6 "No such witness shall be prosecuted or sub-
7 jected to any penalty or forfeiture for or on account
8 of any transaction, matter or thing concerning which
9 he is compelled, after having claimed his privilege
10 against self-incrimination, to testify or produce
11 evidence, nor shall testimony so compelled be used as
12 evidence in any criminal proceeding except in a
13 proceeding described in the next sentence against him
14 in any Court. No witness shall be exempt under this
15 section from prosecution for perjury or contempt
16 committed while giving testimony or producing evidence
17 under compulsion as provided in this section."

18 This again is not a criminal procedure. The
19 man has been granted immunity. He is a grand jury
20 witness. This is not a case where there is evidence
21 to be used against him in a criminal case. I haven't
22 even asked him a question --

23 THE COURT: As I understand the law, the
24 State law, the State procedures are as it happens
25 not the supreme law of the land. As I recall New York

1 State cases, the resolution of the matter in the
2 Supreme Court was that testimony compelled in the
3 State proceeding under a grant of the widest immunity
4 that the State was capable of giving inured from the
5 federal point of view as involuntary testimony which
6 cannot be used in any federal proceeding against a
7 man who is doomed. That it in effect became not a
8 transactional immunity but a use immunity.

9 So here the grant by the State of the immunity
10 has resulted in the federal government being denied
11 the right to use that testimony against him or its
12 fruits in any criminal proceeding. But it hardly
13 means that they cannot pursue in its federal aspect
14 and repercussions, the same inquiry from a man who
15 is knowledgeable enough to have gathered to him from
16 the State a transactional immunity in the general
17 way that some seem to suggest we have a concurrence
18 of two different prosecutorial authorities that the
19 information he can give is useful. So much so that
20 the State was willing to have a transactional
21 immunity which is unimpaired and the government to
22 give him in addition not only the involuntary use
23 immunity which flows from the State having granted
24 the transactional immunity but also as his additional
25 safeguard a use immunity under the order of Judge

1 Bartels.

2 For these reasons, and on these grounds, I
3 must advise Mr. Langella that these are questions he
4 must answer. He must testify.

5 MR. NEWMAN: Well, Judge, since your Honor is
6 indicating -- if I understand your Honor correctly
7 -- that the criteria here is questions are being put
8 to Mr. Langella before a grand jury and your Honor --

9 THE COURT: Without it being a criminal pro-
10 ceeding against him.

11 MR. NEWMAN: Now, what I was about to say to
12 your Honor and urge upon your Honor respectfully is
13 a reconsideration from this point of view, the first
14 thing that happened when we came back before you now
15 is Mr. Del Grosso urged upon your Honor an adjudica-
16 tion that Mr. Langella is in contempt by virtue of
17 his last appearance.

18 THE COURT: I think his patience is sorely
19 tried. He didn't have a chance --

20 MR. NEWMAN: All right.

21 Now, that being the situation, my response with
22 the authorities that I have cited and calling upon
23 your Honor to consider was in response to his motion
24 to punish --

25 THE COURT: I don't think you can taunt him

1 into holding the man in contempt. You are going to
2 have to wait until next month. I am not going to
3 hold Mr. Langella in contempt until he is. And I
4 don't expect him to be.

5 MR. NEWMAN: The point being then, then I
6 misread your Honor. I was responding to his applica-
7 tion for contempt. I wasn't urging upon your Honor
8 that these cases I cited -- and I don't want the
9 record to be incorrect -- bars this question to be
10 put to Mr. Langella. I was urging the principle of
11 these cases and transactional immunity covered in
12 the cases --

13 THE COURT: No, he must answer.

14 MR. DEL GROSSO: May I ask a question?

15 THE COURT: You let him get down to work.
16 There is a lot of work to be done.

17 MR. DEL GROSSO: May I ask Mr. Newman if there
18 will be another application as to electronic sur-
19 veillance or has that already been druled on?

20 THE COURT: I don't know. I am afraid I must
21 ask you to proceed.

22 MR. DEL GROSSO: Yes, your Honor.

23 (The parties left the Courtroom at this time.)

24 (Continued on next page.)

4:40 o'clock p.m.

1
2 MR. DEL GROSSO: At this time, your Honor,
3 the government makes an application to cite the wit-
4 ness, Mr. Langella, for contempt for refusal to
5 answer the question put to him by the grand jury. He
6 refused to answer.

7 THE COURT: Have you got the grand jury re-
8 porter?

9 MR. DEL GROSSO: I'll get the grand jury re-
10 porter here.

11 MR. NEWMAN: May I suggest something else,
12 Judge?

13 THE COURT: What's that?

14 MR. NEWMAN: I'm going to ask, if your Honor
15 please, to consider granting a hearing because the
16 last question that was asked of Mr. Langella or the
17 first question or the questions asked of Mr. Langella
18 which is the source of the application, to punish him
19 for contempt, and I believe I'm paraphrasing it
20 correctly, was if he knew one Alfonse Persico. That
21 question was asked of him before the Manhattan grand
22 jury, also. Therefore, asking now, Judge, since they
23 have in effect asked your Honor to institute a pro-
24 ceeding against this particular witness now, and
25 they've changed this category, I'm asking your Honor

SS:ss
4pml
folls
MP

1 to consider granting a hearing --

2 THE COURT: If it's not to institute a pro-
3 ceeding against him. He was asked a question. He
4 declined to answer it and the question that we're on
5 now is is it a question that he must answer? It
6 hasn't been decided yet.

7 MR. NEWMAN: All right, sir.

8 I'm sorry I misinterpreted the procedure.

9 THE COURT: I'm glad to hear your argument
10 although I had disposed of it.

11 MR. DEL GROSSO: This is Miss Ng, the grand
12 jury reporter. We can swear the witness and she can
13 just read it.

14 THE COURT: Read the questions so we'll know
15 it.

16 MR. DEL GROSSO: The whole thing or the last?

17 THE COURT: The point where the difficulty
18 started.

19 MISS NG: "Question: Mr. Langella, you have
20 conferred with your attorney?

21 "Answer: Yes.

22 "Question: Then what's your answer?

23 "Answer: I respectfully decline to answer --"

24 THE COURT: What was the question he was
25 asked.

1 MISS NG: "Question: Mr. Langella, I'll re-
2 peat the question. Do you know Alfonse Persico?

3 "Answer: I would like to speak to my lawyer
4 about that.

5 "Question: Did you just speak to your attorney,
6 sir? I mean where do we stand? I am asking the
7 questions.

8 "Answer: And I would like to speak to him
9 about that.

10 "Question: Did you converse with your attorney
11 concerning what's going on in here?

12 "Answer: I would like to speak to my attorney
13 about the first question.

14 "Question: Before you go out, I will say this;
15 that you have the right to speak with your attorney,
16 however, you were there now. This is contempt by the
17 very fact that you come in. You go out. You under-
18 stand that?

19 "Answer: I would like to speak to my attorney
20 about the first question."

21 The witness went out and came back in.

22 "Question: Mr. Langella, you have conferred
23 with your attorney?

24 "Answer: Yes.

25 "Question: Then what's your answer?

1 "Answer: I respectfully decline to answer on
2 the grounds that my answer may tend to incriminate me
3 or degrade me and in violation of my right under the
4 fourth and fifth amendment to the United States
5 Constitution. I also was advised that this grand jury
6 I am presently under indictment in New York County
7 awaiting trial and I refuse to answer.

8 "Question: Mr. Langella, perhaps you have
9 read the same statement twice. Maybe there was
10 another paper that you were given. You were just
11 given that paper by your attorney?

12 "Answer: Yes.

13 "Question: You do realize that you have made
14 that same statement prior to this?

15 "Answer: I refuse to answer.

16 "Question: Now I will ask the grand jury
17 forelady to instruct the witness to answer pursuant
18 to the terms of Judge Bartels' Order granting him
19 immunity in that he had to testify and if he doesn't
20 that he could be cited for contempt.

21 "THE FORELADY: I'm ordering you to answer.

22 "Answer: I refuse to answer.

23 "Question: All right, we'll go up to the
24 Judge."

25 (Continued on next page.)

MP:ss
5pm
folls
SS

1 MR. NEWMAN: If your Honor pleases, I request
2 a hearing on the question of --

3 THE COURT: Why should he not answer the
4 question?

5 MR. NEWMAN: On the grounds, Judge, that the
6 information which is the predicate of that question
7 and the predicate of these proceedings are connected,
8 or ultimately will be. I submit on the authorities
9 previously cited, the Hockenberry and the McDaniels
10 cases, that the government now has the burden of
11 showing, since they have asked for a citation in
12 contempt, which is the ultimate penalty against this
13 particular witness, they have the burden of showing
14 they obtained the information which is the predicate
15 of this information from a source untainted by prior
16 grand jury questions. I submit that very question
17 was asked in New York.

18 THE COURT: I will not repeat what I said
19 before. The reason for advising the witness that he
20 need not answer the question I find to be wholly in-
21 adequate and I must direct the witness to answer the
22 question. Before the grand jury, of course. And I
23 must warn him that if he does not answer the question,
24 then I will have to hold you in contempt.

25 What that means is that I will make an oral or

1 written order that you go immediately into the
2 custody of the United States Marshal and continue in
3 his custody until you either answer the question or
4 the grand jury comes to an end. But you must
5 answer.

6 This is not to punish you for doing any
7 criminal act, but because the answer is sought and
8 must be given.

9 Do you understand that?

10 MR. LANGELLA: Yes, your Honor.

11 THE COURT: Okay.

12 MR. NEWMAN: May I have a few minutes to con-
13 fer with the witness?

14 THE COURT: Yes.

15 (Pause.)

16 MR. DEL GROSSO: I have one other thing --

17 MR. NEWMAN: May I go off the record?

18 THE COURT: Yes.

19 MR. NEWMAN: Now, may I go back?

20 Your Honor, what I was going to ask your
21 Honor, in view of the fact you indicated to him what
22 you indicated to him earlier, I would ask your Honor
23 for a postponement of these proceedings for a period
24 of a week to permit me to consult with my client for
25 him to make a determination as to whether he wishes

1 to testify or doesn't wish to testify.

2 THE COURT: I don't think he has any rights
3 in the matter. He's got to testify now.

4 MR. NEWMAN: Well, my next question is, that
5 being the situation, may I have a minute to discuss
6 it? Maybe we can save another trip walking down to
7 the grand jury.

8 THE COURT: No, I think that is an indispensable
9 step. Nobody pays attention to the Judge, it is the
10 grand jury that is entitled to the answer and he must
11 answer. I want to be clear with him that the Order of
12 Judge Bartels applies to these questions.

13 You must answer.

14 MR. NEWMAN: Now, if your Honor pleases, may I
15 ask the Court by way of information and guidance
16 whether the stricture that this defendant -- I with-
17 draw that, this witness faces, your Honor, as to the
18 custody of the United States Marshal, is this a civil
19 contempt or --

20 THE COURT: Yes. Coercive civil contempt.
21 It is to get him to answer not for any other purpose.

22 In other words, anytime he feels like answer-
23 ing, out he comes. It is not for the purpose of
24 punishing him because he is a naughty man, but be-
25 cause he is a recalcitrant witness from which testimony

1 is sought.

2 (The parties left the Courtroom at this time.)

3 MR. DEL GROSSO: We are back, your Honor.

4 THE COURT: We need the stenographer. And do
5 we need the foreman?

6 MR. DEL GROSSO: I don't know, but I will get
7 them.

8 (Pause.)

9 MR. DEL GROSSO: Again, the government renews
10 its application to have Mr. Langella held in contempt
11 pursuant to the Civil Contempt Proceedings or the
12 provisions of Title 18 Section 1826 for failure to
13 testify before the grand jury.

14 THE COURT: Could you come forward, please,
15 Madam Foreman?

16 What is the section?

17 MR. DEL GROSSO: I have 1826, Title 28.

18 THE CLERK: What is your name?

19 MADAM FOREMAN: Blanche Borland.

20 THE COURT: Mr. Langella, I am going to ask
21 the grand jury Court reporter to read the part of the
22 transcript on which the application of Mr. DelGrosso
23 to hold you in contempt is based.

24 Could you read it, please?

25 GRAND JURY REPORTER: "Mr. Langella, I repeat

1 the question, do you know Alfonse Persico?

2 "Answer: I refuse to answer.

3 "Question: I asked the forelady again to
4 order the witness to answer the question pursuant to
5 the Order of Judge Bartels.

6 "THE FORELADY: I order you to answer the
7 question, please.

8 "Answer: I refuse to answer.

9 "Question: I will have to go upstairs to
10 Judge Dooling."

11 THE COURT: Is that what occurred before the
12 grand jury, Mr. Langella?

13 MR. LANGELLA: Yes.

14 THE COURT: I had advised you before you went
15 down to the grand jury that this and other questions
16 put by the United States Attorney you would have to
17 answer.

18 And if you failed to answer them, I would
19 have to commit you for a civil contempt of Court.

20 Do you, sir, persist in your refusal to answer
21 the question?

22 MR. LANGELLA: Yes.

23 THE COURT: I have no alternative then, Mr.
24 Langella, but to hold you and I do now hold you in
25 contempt pursuant to the provisions of Title 28 United

1 States Code Section 1826. And you are ordered to be
2 confined to the United States Federal House of
3 Detention on West Street in Lower Manhattan until
4 such time as you are willing to give the testimony
5 required of you by Mr. DelGrosso in connection with
6 the present grand jury proceeding.

7 As I explained to you, that commitment will
8 continue until you manifest a willingness to testify
9 and return and do testify. Or until the grand jury
10 as it may be extended expires.

11 Do you understand?

12 MR. LANGELLA: Yes, your Honor.

13 THE COURT: Very well. Marshal.

14 MR. NEWMAN: Your Honor, I would request in
15 the alternative in view of the fact Mr. Langella has
16 been available each and every time required, I might
17 also add the last time he was subpoenaed Mr. DelGrosso
18 was ill and we put it over for two weeks and Mr.
19 Langella nevertheless appeared and had the proceeding
20 continued voluntarily. He appeared before the grand
21 jury for the continuance of the subpoena, and Mr.
22 DelGrosso will attest to this. I would ask for a two
23 week stay of commitment to permit me to go to the
24 Circuit Court of Appeals.

25 MR. DEL GROSSO: I would ask that be denied.

1 It is true that I was ill two weeks ago but Mr.
2 Langella had to go before the grand jury and his
3 subpoena was continued until today.

4 The government states that any delay -- any
5 appeal at this time would be just taken for delay.

6 THE COURT: I think I must deny the application.

7 Will you, Marshal, take Mr. Langella into
8 custody.

9 MR. NEWMAN: I would ask your Honor before this
10 is done to reconsider the length, instead of the life
11 of the grand jury, if your Honor would fix a period of
12 time.

13 I will call to your attention, although I know
14 you are not bound by it, a sentence imposed by Judge
15 Judd in an identical situation on Alfonse Persico for
16 his failure to answer, a period was fixed at 60 days.

17 THE COURT: That is treated as a criminal
18 contempt which is not what we are doing here. This
19 is intended to obtain testimony. And the commitment
20 is to continue until the witness does testify or
21 the occasion to which he can be commanded has passed
22 through the expiration of the grand jury.

23 I do not see how I can just convert it into
24 a punitive proceeding by setting any other time or
25 conditions upon the commitment.

1 MR. NEWMAN: I would suggest that that doesn't
2 of necessity turn it into a punitive situation.

3 As a matter of fact, the Circuit Court held
4 it to be nothing more than a civil contempt and
5 would not in fact change the coercive nature of the
6 confinement into one of a punitive nature because the
7 government would have in its power the right to
8 subpoena him into the grand jury again. What it really
9 does is places a burden on the government to see if
10 it is serious about really wanting his testimony at
11 the end or at any time prior to the 60 day period.
12 If he wants the testimony they just serve another
13 subpoena. It doesn't change the import of what your
14 Honor is doing.

15 THE COURT: I wish I could agree with you, but
16 I do not.

17 MR. NEWMAN: Your Honor would not consider a
18 stay with bail pending an appeal?

19 THE COURT: Once confinement is ordered, the
20 matter is not bailable but it is imperative to expedite the appeal as quickly as possible.

21 MR. NEWMAN: I notice it is 5:10. If this
22 witness were suddenly to decide he wanted to change
23 his mind and testify tonight, this is a Wednesday
24 grand jury --
25

1 MR. DEL GROSSO: I could state for the record
2 this grand jury can stay later. It can stay several
3 more hours and if necessary this jury will be in here
4 tomorrow morning to listen to the testimony at any
5 time Mr. Langella wishes to purge himself of the
6 contempt this grand jury will be available.

7 THE COURT: Don't worry, he won't be kept for
8 a week while the grand jury --

9 MR. DEL GROSSO: Certainly not.

10 THE COURT: As soon as he manifests his
11 willingness to testify, things will clear up quite
12 amazingly. Will you take Mr. Langella into custody.

13 MR. NEWMAN: Can your Honor give me a minute?

14 THE COURT: Will you keep him in confinement
15 at West Street until he indicates to you a willing-
16 ness to testify in this case?

17 As soon as he does, will you communicate that
18 to the United States Attorney's office, Mr. DelGrosso,
19 or in his absence, Mr. Dennis Dillon, or in his
20 absence, any of the other men associated with the
21 Task Force.

22 MR. DEL GROSSO: Your HOnor, there was a
23 question from your deputy clerk as to an order. I'll
24 have a formal order drawn up. Could I have it signed
25 tomorrow? I don't have any secretary.

1 THE COURT: First thing in the morning.

2 (At this time the proceeding was concluded.)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WITNESS

IN RE JERRY LANGELLA

74C 638
ORDER

An application has been made to this Court by the United States Attorney (see application and affidavit annexed and marked "A" and "B" respectively) pursuant to his authorization by Henry E. Petersen, Assistant Attorney General for the Criminal Division of the United States Department of Justice (see copy of letter annexed and marked "C"), wherein the affiant has represented that in his judgment the testimony of

JERRY LANGELLA, before the Special United States Grand Jury in the Eastern District of New York, is necessary to the public interest. Pursuant to Title 18, United States Code, Sections 6002, 6003, it is hereby

ORDERED that JERRY LANGELLA answer all questions directed to him by the aforesaid Grand Jury in the Eastern District of New York. It is further

ORDERED, that JERRY LANGELLA shall not be excused from testifying or producing books, papers, or other evidence on the ground that testimony or evidence required of him may tend to incriminate him or subject him to a penalty of forfeiture.

J. R. Bartels
UNITED STATES DISTRICT JUDGE
Eastern District of New York

Dated: Brooklyn, New York
March 20, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
IN RE JERRY LANGELLA, A WITNESS

BEFORE THE SPECIAL SEPTEMBER, 1972

O R D E R

GRAND JURY
-----x

On this 17th day of April, 1974, this matter comes on for the attention of the Court upon the application of the United States of America, by and through Robert G. DelGrosso, Special Attorney, Department of Justice, for an order finding Jerry Langella in direct contempt of court for his refusal to answer questions before the Special September, 1972 Grand Jury at Brooklyn, New York, on April 17, 1974. Jerry Langella was present in person and with his attorney, Gustave Newman, New York, New York.

After hearing argument and being advised in the premises, the Court finds that Jerry Langella appeared before the Special September, 1972 Grand Jury sitting in Brooklyn, New York, on April 17, 1974; that Jerry Langella refused to answer questions propounded by said Grand Jury after having been granted immunity from prosecution under Title 18, United States Code, Section 6003 and ordered to answer questions before the said Grand Jury pursuant to the order of Honorable John R. Bartels, United States District Judge, Eastern District of New York, of March 20, 1974 (upon the application of Edward J. Boyd V, United States Attorney, Eastern District of New York); that Jerry Langella is in direct contempt of the order of this Court and should be committed to

the custody of the United States Marshal.

IT IS ORDERED, ADJUDGED AND DECREED that Jerry Langella is in direct contempt of this Court for his failure to answer questions before the said Grand Jury and he is hereby committed to the custody of the United States Marshal for the Eastern District of New York, for the life of the Grand Jury from the date of this Order, or until such time as he purges himself of this contempt.

IT IS SO ORDERED.

s/ UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
IN RE JERRY LANGELLA, A WITNESS

BEFORE THE SPECIAL SEPTEMBER, 1972

NOTICE OF APPEAL
74 C 638

GRAND JURY
-----x

S I R S :

PLEASE TAKE NOTICE that the witness JERRY LANGELLA hereby appeals to the Court of Appeals for the Second Circuit of New York from an Order made and entered the 17th day of April, 1974 by the Honorable John Dooling, Judge of the Eastern District of New York, which Order determined that said JERRY LANGELLA was in contempt of the Court and committed him to the custody of the Marshal for the life of the Grand Jury from the date of said Order or until such time as he purges himself of this contempt.

Yours, etc.,

GUSTAVE H. NEWMAN
Attorney for Witness LANGELLA
522 Fifth Avenue
New York, New York 10036
Telephone: MU 2-4066

DATED: New York, New York
April 22, 1974

TO: HON. EDWARD J. BOYD V
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
ATT: ROBERT Del GROSSO, AUSA

Witness JERRY LANGELLA
Federal House of Detention
West Street
New York, New York

1
2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF NEW YORK

5 -----X

6 In re Grand Jury Matter :

7 of :

8 JERRY LANGELLA :

9 :
10 -----X

11
12 United States Courthouse
13 Brooklyn, New York

14 June 26, 1974
15 10:00 a.m.

16 B e f o r e

17 HONORABLE JOHN F. DOOLING, JR.

18 U. S. D. J.
19
20
21
22
23

24 SHELDON SILVERMAN
25 Acting Official Court Reporter

Appearances:

DAVID G. TRAGER, Esq.
United States Attorney for the
Eastern District of New York

By: ROBERT DEL GROSSO, Esq.
Assistant U.S. Attorney

GUSTAVE H. NEWMAN, Esq.
Attorney for Defendant
522 Fifth Avenue
New York, N.Y.

1 MR. NEWMAN: Good morning.

2 THE COURT: Good morning, sir.

3 You look just as determined as ever.

4 MR. NEWMAN: I thought, Judge, I could
5 wear him out by attrition, but being a single
6 practitioner, I'm getting worn out by attrition,
7 running between courts.

8 THE COURT: I have had a chance to read
9 your papers and to run quickly through Judge
10 Coffin's decision.

11 MR. NEWMAN: After reading both of these
12 cases, it is my contention, if I understand
13 everything that's transpired in connection with
14 Langella up to this point, is that your Honor
15 initially, when all this came to a head, so to
16 speak, felt that your Honor couldn't even find
17 yourself in a position of making an in camera
18 determination of the orders and the affidavits
19 on the theory that judges of coordinate juris-
20 diction had already passed on them and in effect
21 issued them.

22 Then, when I amplified what I call the
23 Giordano application, your Honor felt compelled
24 to refer that to Judge Bartels to pass on the
25 so-called Will Wilson aspect of it. If your

1 Honor will bear with me, the way I read Lociatto
2 and Marcus --

3 THE COURT: Can we draw any inference from
4 Marcus other than the Will Wilson point?

5 MR. NEWMAN: I think we can, Judge.

6 I think we can --

7 THE COURT: Do you have the text of the
8 Marcus action?

9 MR. DEL GROSSO: I have it here, your
10 Honor.

11 THE COURT: When was that?

12 MR. NEWMAN: That just came down on June
13 12th, Judge. It was a summary reversal.

14 THE COURT: Might I see what it looks
15 like?

16 (Said document handed to the Court.)

17 THE COURT: This is not the wording of
18 the Supreme Court. I want to know what they said.

19 MR. DEL GROSSO: Page 4072.

20 MR. NEWMAN: What they did, Judge --

21 THE COURT: Might I see it?

22 MR. NEWMAN: Yes, sir.

23 (Said papers handed to the Court.)

24 THE COURT: We don't know anything about
25 that except that it was action of the Solicitor

1 General and not of the Court. We don't know
2 the ground the Solicitor's action was, right?

3 MR. NEWMAN: That's right, except I would
4 like to suggest we can read between the lines,
5 based on some of the original language in Marcus,
6 Judge, and what I'm suggesting is Marcus seemed
7 to turn on the Giordano point on its face, and
8 if I understand the First Circuit decision in
9 Marcus, they seemed to say that on the face of it,
10 which is the procedure that everybody was follow-
11 ing, relying on Cali and relying on Persico,
12 that on the face of it these orders were sufficient,
13 but to test the sufficiency I'm reading now from
14 the Marcus opinion below.

x 15 It says: "This statement is facially
16 in compliance with the statute. Only by an
17 evidentiary proceeding could it be determined
18 that Will Wilson was not so especially designated
19 or that he did not in fact authorize the appli-
20 cation."

21 They refused to go that far and granted
22 the evidentiary hearing, which is the position
23 your Honor has taken, that was taken in Persico.

24 I think implicit, however, in the Supreme
25 Court sending it back and perhaps in seeming to

1 prophesyze, in the Solicitor General's position
2 had to be implicit the right on the part of these
3 particular people who now are incarcerated to in
4 fact, at least, have the right to examine all of
5 these documents to raise the contentions that
6 they wanted to make, and I don't think this is
7 from left field, Judge. I think if you look
8 at Lochiatto for a minute and the sake of assum-
9 ing to appeal to our vanity, Lochiatto sets
10 down the same standards that your Honor, in my
11 judgment, set down in Vigorito, which still hasn't
12 been decided by the circuit.

13 In Vigorito, if you remember, Judge, you
14 authorized, or you instructed, under certain
15 safeguards that the Government to turn over to
16 me the order and the affidavits which were cer-
17 tain restrictions upon what I could do with them
18 for the purpose of determining what attack, if
19 any, I could make.

20 In Lochiatto, as I read it, the First
21 Circuit, for the first time, has indicated the
22 same standards with the same safeguards, with
23 the same person.

24 Now, this to me, to put it mildly, is a
25 trend away from their Cali decision. This

1 Cali decision is quoted all over the place,
2 replete throughout the Second Circuit decision
3 in Persico. What I'm saying now for the first
4 time we've a circuit saying that at least
5 defense counsel -- I use the word "defense
6 counsel" -- I know civil contempt, but I use the
7 word defense counsel. I think now, for the first
8 time, we say defense counsel be allowed to look
9 at documents to see what attack they can make on
10 them.

11 Now, we have Marcus, which I grant you
12 is in a gray area, because none of us, or anyway,
13 I'm not privy to the Solicitor General's position,
14 but we can do reading between the lines based on
15 Marcus below.

16 THE COURT: I think it's a lot easier than
17 that. We can find out what the Solicitor General
18 said, because he doesn't talk privately to the
19 Supreme Court. He talks publicly or not at all.

20 MR. NEWMAN: I understand that, sir.
21 That goes into the second facet of what I'm
22 applying for. I think now, for the first time,
23 in all candor, Judge Dooling, I have a viable
24 issue, at least to the extent I have a split in
25 circuits and --

1 THE COURT: A what?

2 MR. NEWMAN: Split in circuits between
3 Persico and Lochiatto.

4 THE COURT: We're in the Second Circuit.

5 MR. NEWMAN: I understand that. I'm not
6 asking your Honor to overrule the Second Circuit,
7 but I'm suggesting --

8 THE COURT: I've never succeeded in doing
9 that, and indeed --

10 MR. NEWMAN: Let me suggest to your Honor:
11 Your Honor can take some comfort that in Vigorito,
12 again, in appealing to your vanity, you pioneered
13 with that decision in Vigorito. I don't think
14 I'm indicating any subjective analysis of Mr. Bar-
15 low's position, but he felt he would get a summary
16 reversal. It's over two months now since we argu-
17 ed Vigorito.

18 THE COURT: Whom was it argued before?

19 MR. NEWMAN: Judge Hayes, Lombard, and
20 Judge Jameson, a visiting judge from Montana,
21 who I understand at that time was president of
22 the American Bar Association and was a consultant
23 to Congress on the intent of the wire tap statute.

24 Mr. Barlow said, "Congress never intended
25 this and this." Judge Lombard said to him, "Did

1 you ask Judge Jameson that?" and Mr. Barlow was
2 caught in a box, so to speak.

3 Be that as it may, Judge, I really think
4 we now have a viable issue. We have a viable
5 issue to this extent: I think I'm entitled to
6 see the wire tap orders and affidavits under
7 Lochiatto. I am not under the Second Circuit.
8 I think I am going to get comfort from that
9 position from Marcus. If I can't get comfort
10 from that absolute position from Marcus, I cer-
11 tainly can get this from Marcus.

12 Perhaps I'm entitled to more than Judge
13 Bartels' in camera examination on the Klein-
14 dienst point. I don't want to seem presumptuous,
15 but as I understand it, the electronic intercep-
16 tion order here was signed by Mr. Kleindienst
17 or allegedly signed by Mr. Kleindienst.

18 THE COURT: The authorization letter?

19 MR. DEL ROSSO: Yes.

20 MR. NEWMAN: Now, Judge, I think under
21 Marcus I'm entitled to a hearing on that issue.
22 I suggest to your Honor, most respectfully, and
23 I hope you don't treat it as presumptuous, after
24 all, Mr. Kleindienst, who now stands convicted,
25 euphemistically called a false statement to

1 Congress. I'm entitled to go beyond just a
2 mere in camera examination, in due deference to
3 Judge Bartels, both under Luchiatto and under
4 Marcus.

5 I think, on the other hand, so that I can
6 complete my argument, if there's some hesitancy
7 about this on your Honor's part, then I think
8 I've at least demonstrated a viable sufficiency
9 in the split between circuits and the uncertainty
10 concerning what Marcus really means, to make
11 plausible my next request for bail, because
12 I would like to call to your Honor's attention
13 some language in Judge Coffin's situation at
14 the bottom of his -- I don't know what your
15 Honor would call it in Marcus -- I guess it
16 would really be a similar opinion with some
17 reservations.

18 He says something which I think it
19 interesting. "In any event, the chances of
20 incarcerating a witness prematurely would have
21 been minimized if this procedure had been follow-
22 ed," that is, the procedure of having the
23 Government represent, et cetera.

24 I think here we shouldn't, while
25 irrespective of anybody's feelings toward

1 Langella, I don't think that with two such issues,
2 one as demonstrated under Lochiatto, were split
3 in the circuits.

4 Two, while we're all uncertain what Marcus
5 really means until we see the Solicitor General's
6 position, that Langella should languish in jail
7 irrespective of the motivation, irrespective of
8 Langella, why he should languish in jail while
9 we try to ascertain what the true status of the
10 law is.

11 I would alternatively request if your
12 Honor in the current posture of the record thinks
13 it's premature to grant the relief until you've
14 seen Marcus, to admit Langella to bail pending a
15 decision on this motion, Judge.

16 MR. DEL GROSSO: I would like to go to
17 Lochiatto. Lochiatto goes somewhat beyond what
18 the Second Circuit did In re Persico. I disagree
19 with Lochiatto. I think it goes too far.

20 If I may read what I think are -- what
21 I believe are pertinent observations by the
22 First Circuit. I have only a slip opinion.
23 I'm sorry, your Honor. It states: "...objection
24 then is to minimize the delay, secure the
25 Government interest, if any, in secrecy, and

1 protect the defendant's right to assert the
2 defenses that Congress established." It goes
3 further and says, "balancing the three competing
4 needs, merited secrecy, reasonable expedition
5 and meaningful defense, we deem the following
6 ground rules to serve best to statutory scheme.
7 There should be an opportunity for inspection
8 of the limited materials. The authorized appli-
9 cation of the Attorney General or his designate,
10 18 United States Code 2516, Subparagraph 1. The
11 affidavits in support of the court order, the
12 court order itself, and an affidavit submitted
13 by the Government indicating the length of time
14 the surveillance was conducted. No evidence need
15 be provided the defendant for the purpose of
16 litigating the issues of truth or statements
17 made by affiants, or the minimization of federal
18 officials in monitoring conversations. If the
19 Government does not object upon grounds of harm
20 due to breach of secrecy, the defendant is
21 entitled to access to these materials in order
22 to develop his defenses. If the Government inter-
23 poses an objection on secrecy grounds, the District
24 Court must determine whether the secret informa-
25 tion can successfully be deleted or summarized

1 and access to the excerpted material granted."

2 What I'm saying here, your Honor, is that
3 the Second Circuit in Persico -- they spoke about
4 the situation where the Government came forth and
5 said there was an acknowledgment by the Government
6 there was electronic surveillance and said it
7 was proper. It was a proper act. In fact, they
8 rely upon what Judge Judd did. He had an in
9 camera inspection. Judge Judd looked at the
10 orders, looked at the affidavits. The Government
11 objected to this, but the Second Circuit apparent-
12 ly rule whether Judge Judd was allowed to do what
13 he did.

14 They said what he did was proper. They
15 said, "We have reason to believe these orders
16 are proper. Judge Judd found the proper reading.
17 So do we."

18 I'm saying Lochiatto is putting another
19 burden on the Government saying, "All right, you
20 can have an in camera inspection. If the Govern-
21 ment comes in and says, 'Look, for the purpose
22 of secrecy, our investigation will be destroyed
23 if this is made available to the witness.'"

24 I think we should look at what's important
25 in this case. I have been told many times, not

1 only by Mr. Newman, but in another matter,
2 another witness, by Mrs. Rosner, that "Go ahead,
3 Mr. Dell Grosso. What do you have to bring this
4 man in? If you have the evidence, go ahead,
5 indict."

6 I submit I don't have to indict. It's
7 not a purpose of my investigation to put these
8 men in jail for contempt.

9 By the nature, our title, "Organized
10 Crime and Racketeering Section," our reason for
11 this investigation is determined through these
12 individuals to try to bring it to the public;
13 that in fact there is an organized crime organiza-
14 tion. That's what we're trying to show.

15 Now, I want Mr. Langella to testify. If
16 Mr. Langella has access, first of all, to the
17 affidavits, to the orders and to go further, if
18 he has access to the tapes, he could still say,
19 "No, I refuse to testify," or, in fact, he may
20 be able to explain quite a few things away. I'm
21 saying that Mr. Langella has been afforded every
22 constitutional right that is is allowed under
23 Gelbard. I think the Government has gone beyond
24 what it has to do. We still say that the Judge--

25 THE COURT: Neither in Persico, Luchiatto

1 or Marcus we're dealing with a person who had
2 been granted testimonial privilege, are we?

3 MR. NEWMAN: Yes, we are, in all three.

4 THE COURT: All three?

5 MR. DEL GROSSO: In Marcus he was granted
6 transactional immunity, 2614. In our situation,
7 it's use immunity under 6002.

8 I would say this, your Honor, that the
9 orders were checked by Judge Judd. The affidavits
10 were checked. He found probable cause. That's
11 on the face of the documents.

12 Now, when there was a question brought up
13 by Mr. Newman as to the proper authorization,
14 the signatures, immediately I was requested by
15 your office, requested by Judge Bartels and by
16 Judge Neaher to get confirmation that these
17 signatures were proper, which I did. I made
18 that known, had a letter signed or sent from
19 the Assistant Attorney General Peterson to
20 Judge Bartels. I showed it to Judge Neaher.
21 Every document here was signed by -- authoriza-
22 tion by the Attorney General Kleindienst, and
23 then the letters to us were also signed by Mr.
24 Peterson. There's no Giordano problem or Chavez
25 problem. In fact, that's what Marcus is, Chavez

1 problem, a Will Wilson letter. Apparently in
2 Chavez -- I really don't know. I didn't look at
3 the District Court opinion.

4 THE COURT: Chavez?

5 MR. DEL GROSSO: Looking at the Marcus
6 case. I did not look at the District Court
7 opinion. I was remiss on that. I have to go
8 down to check it out, but that situation,
9 apparently, these orders and affidavits -- I don't
10 know if they were shown to the witness -- but at
11 least the District Court looked at them. We know
12 that for a fact. There was, at least in camera
13 inspection. They're talking about the facial
14 validity of the document.

15 Now, what happens here is that they're
16 probably sending it back to the District Court
17 to determine whether or not there is either a
18 Giordano problem as to the authorization of the
19 Attorney General or whether or not it's the
20 authorization of Mr. Wilson.

21 If it were signed by an individual other
22 than --

23 THE COURT: Let me ask you this: Is there
24 any governmental agency at this time in not
25 disclosing to Mr. Newman the letters underlying

1 the original order and this letter from Mr. Peter-
2 son?

3 MR.DEL GROSSO: Yes, your Honor. The way
4 the letter is written, it has -- it talks about
5 attached -- if I can just say generally, talks
6 about attached memoranda. I sent other memoranda
7 along with the other letter.

8 THE COURT: I'm not talking about that.
9 As I understand it, there was attached to the
10 original orders the usual pictures of the
11 authorizations either as received by wire photo
12 or direct, right?

13 MR. DEL GROSSO: Yes.

14 THE COURT: In addition, you say that
15 after Giordano and Chavez and after the motion was
16 revised, inquiry was made in Washington. A letter
17 was obtained from Mr. Peterson and that letter
18 was exhibited to Judges Bartels and Neaher?

19 MR. DEL GROSSO: Right.

20 THE COURT: What I ask, is there any public
21 interest in not disclosing those letters and the
22 letters alone, to Mr. Newman?

23 MR. DEL GROSSO: The letter from Assistant
24 Attorney General Peterson to Judge Bartels, I be-
25 lieve I can show partially as to where he says,

1 "These were signed by...". It says, "The accom-
2 panying memoranda...".

3 THE COURT: We're not asking about the
4 production of the memoranda. I'm talking about
5 the letter itself, the veritable letter, the
6 piece of paper.

7 MR. DEL GROSSO: I would object to showing
8 that to Mr. Newman. I would say that this has
9 been ruled -- Judge Bartels has seen fit that
10 this was proper, that the signatures were proper
11 and so has Judge Neaher.

12 Now I would make it available to the Court.
13 I'd rather have the Court look at it because I'm
14 not in a position at this time to say, "Well, in
15 this particular case, since I have the relation-
16 ship that I do with Mr. Newman, I can show this
17 particular memorandum to him."

18 THE COURT: Is there any reason of public
19 interest why the papers on which the various
20 orders were made should not be disclosed to Mr.
21 Newman at this time?

22 MR. DEL GROSSO: Only as to the signature,
23 your Honor?

24 THE COURT: No, the papers supporting the
25 order and the orders.

1 MR. DEL GROSSO: Yes, your Honor.

2 I believe that if those affidavits are made known
3 to the witness through his attorney, and this,
4 again, is not any suggestion or accusation against
5 Mr. Newman. I taking this across the board for
6 every attorney saying that it's impossible for
7 it to be turned over. There's also the danger
8 of -- in this situation there are individuals
9 who -- their names are sources in the affidavits,
10 the underlying affidavits. If this were made
11 known, I believe that, first of all, our case
12 could be severely jeopardized; our future case
13 could be severely jeopardized.

14 These individuals may have to be relocated
15 now. I believe our investigation could come to
16 an end. The whole need for secrecy and the
17 grand jury proceeding is quite self-evident by
18 the fact Mr. Persico and Mr. Langella have con-
19 sistently refused, absolutely, to testify when
20 nothing can happen to them legally and they have
21 been afforded -- and it's been made known to Mr.
22 Persico -- and I have, I believe, made it known
23 here on the record as to Mr. Langella. If there's
24 any danger to them, physical harm, the government
25 will protect them.

1 MR. NEWMAN: Judge, I most respectfully
2 seem to think that this is a re-echoing of the
3 argument in Vigorito, that is, an argument by
4 horror, an argument by fear. As I read these
5 cases, it seems to me that if there's a bona
6 fide concern on the part of the Government, the
7 interests of both sides can be protected. I can
8 just think off the top of my head of some similar
9 procedure to Vigorito.

10 I have no objection, Judge Dooling, then
11 giving you the affidavits, giving you the orders,
12 meeting in camera with you, redacting what they
13 consider and in your Honor's judgment would be
14 material that would some way jeopardize their
15 case or their witnesses.

16 I'm not indicating that there's any sub-
17 stance to Mr. Del Grosso's claim. I'm not imping-
18 ing his integrity. I'm always concerned when
19 prosecutors argue from the horrible. Let your
20 Honor redact the material. I would not take the
21 material with me. I would examine in chambers,
22 agree not to make notes.

23 As an officer of this court, after a lot
24 of years, I would not in any way, shape or form
25 repeat any of this information. All I would do

1 is, if I had a legal basis to raise an argument,
2 I would raise that argument before your Honor.
3 I wouldn't communicate either to Mrs. Rosner or
4 any other lawyer. I wouldn't communicate it to
5 my client, the contents of any of those affidavits
6 that I was allowed to examine or the orders that
7 I was allowed to examine. I gave the same assur-
8 ances and your Honor put me under the same injunc-
9 tion in Vigorito. Mr. Barlow said, and if I may
10 be flattering myself in reading between the lines,
11 Mr. Del Grosso said, they're not concerned about
12 my personal integrity. I am sure the Court,
13 anyway, the Court wants to be assured all I would
14 do is utilize the information that the Court
15 allowed me to look at for the purpose of protect-
16 ing my client's rights.

17 Now. I would like to go back for a minute,
18 Judge, I think something Mr. Del Grosso overlooks.
19 Perhaps all prosecutors overlook. There's no
20 constitutional right to wiretap. All of the
21 material that's contained in the Congressional
22 Record by way of intent or by way of notes indi-
23 cates a general attitude that wiretap is repug-
24 nant to our concept as an interference with rights
25 and the Safe Streets Act was not devised so

1 Government might like to argue, to protect the
2 interests of the Government, make wiretap easy.
3 Quite to the contrary, it was devised to protect
4 the rights of the individual, and over and over
5 again, in the legislative intent which I set
6 forth at great length in Vigorito, is the
7 admonition over and again, the right of privacy
8 must be protected, and all the various devices
9 are set up to protect the right of privacy.
10 Sometimes we lose sight of it. We tend to focus
11 on the idea that the government has a right to
12 wiretap and we're seeking to interfere with that.
13 That's not the posture of it, Judge. I think
14 it's the contrary.

xx 15 The posture that is the individual has the
16 right to privacy and wiretap is an interference
17 with that and should be construed very, very
18 strictly. That's what I read into Lochiatto.
19 That's what I read, perhaps the rose-colored
20 glasses, into Marcus.

21 I really don't think that while we thresh
22 this out and litigate it, and the Government
23 takes what I would call a hard-nose position
24 of not giving an inch on it, Langella should
25 languish in jail.

1 THE COURT: How long has he been there
2 now?

3 MR. NEWMAN: He's been there, Judge --

4 MR. DEL GROSSO: Approximately two months.

5 MR. NEWMAN: April 17th, Judge.

6 MR. DEL GROSSO: If I might give an
7 answer, your Honor: the question here is really
8 not whether or not there's a right to wiretapping
9 or not. The Safe Streets Act, Title 3, was
10 enacted in response to taps in the Burger case.
11 I don't believe that is really the issue, whether
12 or not we're talking about what the propriety
13 of the electronic surveillance is.

14 It is true, what Mr. Newman has said.
15 I'm not at all doubting his integrity, but I do
16 not believe that an attorney can come in and take
17 over what in effect amounts to an appellate
18 function. That's what he's asking. I would just
19 refer to the last sentence of the Lochiatto
20 opinion.

21 It says, "But just as a fit between metals
22 of various rates of expansion under heat, it's
x 23 practically resolved by a resilliable gasket.
x 24 It's a sound and sensible judicial expression
xx 25 properly cried upon when criminal making proves

1 intractable."

2 In fact, what we have asked for, initially,
3 against in camera inspection. All that I believe
4 the witness is entitled to, in camera inspection,
5 your Honor has refused to look at the orders,
6 but Judge Judd has looked at the orders.
7 Judge Bartels rules on two orders, and Judge
8 Neaher ruled on another.

9 Now, that's in itself -- the Court of
10 Appeals, by the way, has said those orders are
11 proper. Now we're going to have Judge --
12 I don't mean that as a slight -- we're going to
13 have Mr. Newman --

14 THE COURT: Are you saying the orders
15 the Court of Appeals examined are the orders
16 that are involved here?

17 MR. DEL GROSSO: Yes, your Honor. I have
18 not received them back yet. The Clerk's office
19 hasn't. They're still over there in the Second
20 Circuit.

21 I would like to say another thing. As
22 to crying wolf or whatnot, I can just make men-
23 tion of the fact Saturday morning, approximately
24 four o'clock, two individuals who I have under
25 subpoena, one under subpoena was shotgunned to

1 death. They have a heck of a lot to do with
2 this case. I was called approximately six in
3 the morning concerning the deaths. I can tell
4 you there is -- it is not the prosecutor crying
5 wolf. There's definite danger here.

6 THE COURT: I'll reserve decision.

7 MR. NEWMAN: On the bail aspect?

8 THE COURT: On the bail aspect, we're
9 in problems under the statute.

10 MR. NEWMAN: I didn't anticipate. Could
11 I take another minute of your time?

12 THE COURT: Let's look at the statute.

13 MR. DEL GROSSO: 28 U.S. Code 1826.

14 MR. NEWMAN: I'll sit here and read it,
15 Judge.

16 (Pause)

17 MR. NEWMAN: Most respectfully, I don't
18 think your Honor is barred unless you determined
19 that the application we -- we filed a petition
20 for cert. with the United States Supreme Court.
21 Maybe I should indicate that to your Honor. We
22 bypassed the Court of Appeals.

23 THE COURT: How did you do that?

24 MR. NEWMAN: It's a civil appeal, Judge.
25 I think the Court of Appeals has spoken already

1 in Persico, and it would just be redundancy,
2 really. We filed our petition directly to the
3 United States Supreme Court.

4 THE COURT: It hasn't been dismissed yet?

5 MR. NEWMAN: No.

6 THE COURT: Under what provision of law?

7 MR. NEWMAN: I don't have the provision
8 with me -- I misspoke. I have it. I coupled
9 it with -- I coupled it with Persico. We went
10 up on a joint appeal. The issues are identical
11 in Persico.

12 MR. DEL GROSSO: If I can state for the
13 record just what Mr. Newman has said, that it's
14 identical with Persico. As I said, your Honor,
15 the Second Circuit has found that Judge Judd's
16 determination was proper because they did see
17 the orders after I improperly asked them or said
18 to them, "Where are the orders, the affidavits
19 and applications?" I said, "Your Honors, I submit
20 you have no right to look at them."

21 They said to me, "We're the Court of
22 Appeals; we have the right to look at it." They
23 looked at it and they found it was proper.

24 MR. NEWMAN: Your Honor may keep a copy
25 of that for whatever purpose you want. It's an

1 extra one I have.

2 MR. DEL GROSSO: I would say here now, your
3 Honor, that also that this case is beyond the
4 jurisdiction of this court. They've submitted
5 it to the Supreme Court.

6 MR. NEWMAN: That's not so. If your Honor
7 please, as I read the section that your Honor was
8 kind enough to show me, your Honor can grant
9 bail here because I haven't moved in any other
10 court for bail. You're not divested of juris-
11 diction of the bail question, and in order for
12 your Honor to deny me bail, you would have to,
13 in effect, adjudicate my appeal as frivolous,
14 No. 1.

15 No. 2, that I'm doing it for the purposes
16 of delay. Absent that, I think I have a right
17 to bail, Judge.

18 MR. DEL GROSSO: Your Honor, might
19 I respond to that?

20 THE COURT: You see, as I understand,
21 there isn't any issue now presented that wasn't
22 presented earlier and which hasn't been passed
23 on in Persico. That's the real point.

24 MR. NEWMAN: I think I'm in a different
25 ball park, so to speak, by virtue of Lochiatto,

1 a split in the circuits, by my going directly to
2 the Supreme Court. I'm going to file an addendum.
3 Secondly, by Marcus, I'm in the dark in Marcus
4 until I see the Solicitor General's responding
5 papers, but pending that, I think it indicates
6 some viability to my issue.

7 MR. DEL GROSSO: I think, your Honor, if
8 I could say one thing, either bail would be
9 allowed unless the appeal is taken -- purposes
10 of delay or frivolous appeal. I'm not saying
11 anything --

12 THE COURT: As I understand it, the
13 Supreme Court can't possibly dispose of the issue
14 before January. When is this grand jury expiring?

15 MR. DEL GROSSO: September, but it will be
16 extended not just for Mr. --

17 THE COURT: No, it won't. An application
18 will be made.

19 MR. DEL GROSSO: An application would be
20 made.

21 THE COURT: To the Chief Judge.

22 MR. DEL GROSSO: Apparently I spoke too
23 soon. An application would be made to the Chief
24 Judge. I'm sure there will be sufficient reasons
25 in that application for extension because there

x 1 are many cases in that are still pending in that
2 grand jury. As a matter of fact, we're still look-
3 ing for Mr. Persico. He has seen fit to leave
4 the area completely.

5 MR. NEWMAN: That has no application to us.
x 6 We will present whenever we're required to appear,
7 so the record is clear --

8 THE COURT: I thought Mr. Persico was
9 committed.

10 MR. DEL GROSSO: He was, but there is an
11 administrative hassle, to say the least. I don't
12 know if you want this on the record or not. It
13 was to get -- he was to get out on the 23rd.
14 Apparently West Street has a provision if it's --
15 if an individual is to be let out on the weekend,
16 so no administrative personnel on the weekend --
17 the let the individual out on Friday, unbeknownst
18 to me and the agents. Since that time he's been
19 in several places, throughout the United States,
20 but we're not able to reach him.

21 MR. NEWMAN: Because there is a record
22 applicable to Langella, an issue viable on bail,
23 I would like the record to indicate very clearly
24 that the history of Mr. Langella was that he
25 received a subpoena. Adjournment was arranged

1 by telephone with no subpoena served on him, and
2 I gave my assurances to Mr. Del Grosso that he
3 would appear and he appeared when I assured
4 Mr. Del Grosso. These other allegations concern-
5 ing Mr. Persico are not applicable to Mr. Langella
6 and Mr. Del Grosso, in all fairness, would have
7 to concede I gave verbal assurance that Langella
8 would be here and he was here.

9 MR. DEL GROSSO: Absolutely. I concede
10 that.

11 THE COURT: Very well.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

IN RE JERRY LANGELLA, A WITNESS

BEFORE THE SPECIAL SEPTEMBER, 1972

ORDER

GRAND JURY

-----x

ORDER

June 28, 1974

The orders here involved are the same ones the Persico case (491 F.2d 1156) considered, and the judges who made them have reconsidered them in the light of Giordano and Chavez; counsel for the witness has seen, or does not question the existence and language of, the recent Peterson letter. There is no basis for reconsideration even in light of Judge Coffin's impressive reconsideration and modification (apparently) of the First Circuit view in In Re Lochiatto (May 31, 1974).

It is, after hearing,

ORDERED that the motion for reargument is denied.

S/ JOHN F. DOOLING JR.
U.S.D.J.

GUSTAVE H. NEWMAN

COUNSELOR AT LAW

522 FIFTH AVENUE
NEW YORK, N. Y. 10036

MURRAY HILL 2-4066

July 1st, 1974

Honorable John F. Dooling
United States District Judge
Eastern District of New York
Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JUL 8 1974 ★

TIME A.M.
P.M.

RE: JERRY LANGELLA
74 C 638

Honorable Sir:

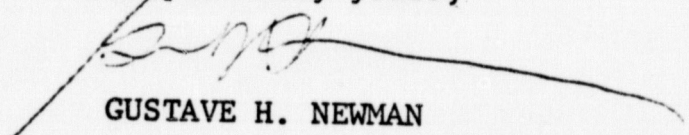
I am in receipt of the order denying my motion for re-argument on Langella. I wanted to clear up a misunderstanding in that the order states:

"Counsel for the witness has seen, or does not question the existence and language of, the recent Peterson letter."

I have not seen the letter and I question the language involved as I did on oral argument and I thought I had even raised an issue concerning Mr. Kleindienst.

It was for this purpose on the Giordano point that I cited the Marcus case. I felt in the brief note on Marcus that it seemed to imply that I was entitled to see the underlying documentation, and perhaps go beyond that to obtain a full blown hearing.

Respectfully yours,


GUSTAVE H. NEWMAN

GHN:ga

CC: Robert Del Grosso
Special Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,

-against-

JERRY LANGELLA,

Defendant.
----- X

: '74 C 638

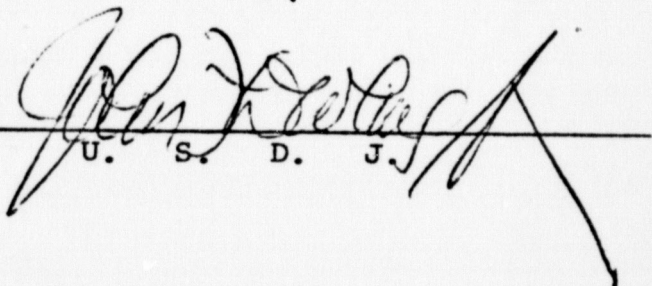
: MEMORANDUM
: and
: ORDER

Referring to the attached letter of July 1, 1974, and the copy of the letter to Judge Bartels, it is now understood that an examination of the recent Peterson letter was not requested, would not have been denied, and, if now requested of Government counsel, would not be refused. Since, if the underlying ex parte orders are to be re-examined on the Giordano-Chavez ground, that is properly a matter for the judges who made the orders and not for another judge of only coordinate jurisdiction, ^{the} basis now appears for changing the decision on the motion for reargument.

It is so ORDERED.

Brooklyn, New York

July 8, 1974.


U. S. D. J.

GUSTAVE H. NEWMAN
COUNSELOR AT LAW

522 FIFTH AVENUE
NEW YORK, N.Y. 10036
MURRAY HILL 2-4066

July 2nd, 1974

Honorable John R. Bartels
United States District Judge
Eastern District of New York
Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

RE: IN RE JERRY LANGELLA, A WITNESS
BEFORE THE SPECIAL SEPTEMBER,
1972 GRAND JURY.
#74 C 638

Honorable Sir:

I understand that Judge Dooling referred to you an application I made on behalf of the above witness for an examination of all of the underlying documents in connection with an electronic interception of the witness' conversations.

The application and I must assume the reference were based upon a recent decision in the U.S. v. Giordano.

I would respectfully request permission to examine the documents authorizing the interception and the correspondence from the Attorney General in reference to same. I am, of course, not referring to the electronic interception order or the affidavits upon which the order is based. I am requesting this right under the authority of Marcus v. U.S., recently reported in the Criminal Law Reporter on June 12, 1974, Vol. 15 (15 CRL 4069) with an explanatory note at 15 CRL 4072. It appears from the explanatory note that the Solicitor General consented to a remand for reconsideration. I am enclosing a photostatic copy of the Solicitor General's memorandum and based upon it I would respectfully request the right to examine the underlying documents.

Respectfully yours,

GHN:ga
CC: Hon. J.F. Dooling
Robert Del Grosso

GUSTAVE H. NEWMAN

No. 73-1396

In the Supreme Court of the United States

OCTOBER TERM, 1973

ARTHUR MARCUS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ROBERT H. BORK,

Solicitor General

Department of Justice,

Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1396

ARTHUR MARCUS, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT*

MEMORANDUM FOR THE UNITED STATES

Petitioner contends that he should not have been held in contempt for refusing to answer questions before a grand jury which were based on allegedly illegal electronic surveillance.

Following a grant of immunity pursuant to 18 U.S.C. 2514, petitioner persisted in refusing to answer questions before a grand jury. He was accordingly ordered confined for civil contempt by the United States District Court for the District of Massachusetts for refusing without just cause to comply with an order of the court to testify, as provided by 28 U.S.C. 1826. The period of confinement was to last until such time as petitioner was willing to testify, the period not to exceed the life of the grand jury, including extension, and in no event for longer than 18 months. The court of appeals affirmed (Pet. App. A 15; 491 F. 2d 901).

(1)

Petitioner's defense to the contempt charge was that the questions were based on communications intercepted in violation of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510, *et seq.*, since the three applications for the interception orders were allegedly not properly authorized. It was stipulated that petitioner's telephone conversations were intercepted, and that the questions to be put to him were based on or derived from those interceptions (Pet. App. I 49). The government also conceded at the district court hearing that "this was a Will Wilson case" (Pet. App. A 16). That is to say that, although the letters authorizing the field attorney to apply for interception orders, and the orders issued on the basis of those applications indicated that Assistant Attorney General Wilson authorized the applications, he did not in fact do so. See *United States v. Giordano*, No. 72-1057, decided May 13, 1974, slip op. p. 4; *United States v. Chavez*, No. 72-1319, decided May 13, 1974, slip op. pp. 3-4.

The court of appeals recognized that *Gelbard v. United States*, 408 U.S. 41, indicates that a witness faced with contempt proceedings for refusal to testify before a grand jury may invoke the provisions of 18 U.S.C. 2515 as a defense (Pet. App. A 18).¹ It further concluded that Section 2515 should be read with 18 U.S. 2518(10)(a), providing the grounds for suppressing evidence derived from electronic surveillance (Pet. App. A 19), and that the "Will Wilson defect" did not, under Section 2518(10)(a), merit suppression (Pet. App. A 20).

The court's analysis is consistent with this Court's opinion in *Chavez* only if the Attorney General himself

¹18 U.S.C. 2515 prohibits, *inter alia*, the use of any evidence derived from intercepted communications in any proceeding before any grand jury if disclosure of that information would be in violation of Title III.

personally authorized all three applications.² Since that is not entirely clear from the record in this case, we believe it would be appropriate for this Court to grant the petition for certiorari, vacate the judgment below, and remand for reconsideration in light of *Chavez* and *Giordano*.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

MAY 1974.

²Although the authorizations were not analyzed in those terms below, it appears that one of the three applications, authorized in 1973, is without defect. The remaining two were apparently authorized by the Attorney General personally, and thus are presumably governed by *Chavez*. There may, however, have been reliance upon a prior *Giordano*-type interception to establish probable cause. In any event, further proceedings below are necessary to clarify the record in light of this Court's decisions in *Chavez* and *Giordano*.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

IN RE JERRY LANGELLA, A WITNESS

BEFORE THE SPECIAL SEPTEMBER, 1972

GRAND JURY

NOTICE OF APPEAL
74 C 638

-----x

S I R S :

PLEASE TAKE NOTICE that the witness JERRY LANGELLA hereby appeals to the Court of Appeals for the Second Circuit of New York from an Order made and entered June 28th, 1974 by the Honorable John F. Dooling, Judge of the Eastern District of New York, which Order denied the witness' motion to reargue an adjudication by Judge Dooling on April 17, 1974 holding him in contempt.

Yours, etc.,

GUSTAVE H. NEWMAN
Attorney for Witness LANGELLA
522 Fifth Avenue
New York, New York 10036
Telephone: (212) MU 2-4066

DATED: NEW YORK, NEW YORK
July 2nd, 1974

TO: HON. EDWARD J. BOYD V
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
ATT: ROBERT DEL GROSSO,
Special Attorney

Witness JERRY LANGELLA
Federal House of Detention
West Street
New York, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

IN RE JERRY LANGELLA, A WITNESS

BEFORE THE SPECIAL SEPTEMBER, 1972

NOTICE OF MOTION
74 C 638

GRAND JURY

-----x

S I R S :

PLEASE TAKE NOTICE that upon the annexed Affidavit of GUSTAVE H. NEWMAN and upon all of the pleadings and proceedings heretofore had herein, the undersigned will move before the Honorable John F. Dooling, a Judge of this Court, at the Courthouse, 225 Cadman Plaza East, Brooklyn, New York, at a time and place to be set by said Judge for an order granting the following relief:

1. Rearguing the determination made on April 17, 1974 that the above witness was in contempt and upon such reargument, setting aside the order adjudicating him in contempt.

2. For such other and further relief as to the Court may seem just in the premises.

DATED: NEW YORK, NEW YORK
July 15, 1974

Yours, etc.,

GUSTAVE H. NEWMAN
Attorney for Witness LANGELLA
522 Fifth Avenue
New York, New York 10036
(212) MU 2-4066

TO: HON. DAVID TRAGER
United States Attorney
225 Cadman Plaza East
Brooklyn, New York 11201
ATT: ROBERT DEL GROSSO, SPECIAL ATTORNEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

IN RE JERRY LANGELLA, A WITNESS

BEFORE THE SPECIAL SEPTEMBER, 1972

AFFIDAVIT
74 C 638

GRAND JURY

-----x

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

GUSTAVE H. NEWMAN, being duly sworn on oath, deposes and states:

I am the attorney for the above witness. In such capacity, I am fully familiar with all of the facts and circumstances herein. On April 17, 1974, the witness was adjudicated in contempt for failure to testify before a Grand Jury. Prior to the adjudication, he was purportedly advised that he had been granted immunity based on an application made to the Court. This advice was imparted both by the Assistant United States Attorney and by the Court as it appears on pages 19 and 20 of the minutes of proceedings of April 17, 1974. The immunity order was made an exhibit in the proceedings of that date and is hereto annexed and made a part hereof as Exhibit "A".

Upon information and belief, the application for immunity to the Court was made by someone other than the United States Attorney for this District. Title 18, U.S.C., Section 6003 requires that the request be made by the United States Attorney for the District. In a recent case, In the Matter of Thomas DiBella, Docket No. 74-1813, slip opinion, decided July 3, 1974

at page 4677, the Court in affirming DiBella's adjudication of contempt passed on a related problem. In DiBella (supra), the witness on appeal stressed only the first two criteria established by the Court in interpreting Section 6003. The Court did not pass on the third criteria, ie., who is to apply to the Court for immunity, since the witness DiBella did not stress this in his appeal and, secondly, when immunity was conferred, Chief Judge Mishler brought the United States Attorney into the Court and he made a nunc-pro-tunc application for immunity. The Court, however, indicated at page 4682 of the slip opinion that the United States Attorney should be the one to make the application to the District Court for an immunity order. We submit at bar that this was not done and that, therefore, the order which purports to confer immunity is invalid and, therefore, the witness LANGELLA could not and should not be held in contempt.

WHEREFORE, it is respectfully prayed that the relief requested in the annexed Notice of Motion be in all respects granted.

SWORN TO BEFORE ME THIS 15
day of July, 1974.

GUSTAVE H. NEWMAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

IN RE JERRY LANGELLA, A WITNESS
BEFORE THE SPECIAL SEPTEMBER, 1972
GRAND JURY

-----x

ORDER

JULY 30, 1974

The application is recited as one made by the
United States Attorney and that meets the requirement
of Section 6003(b) and Matter of DiBella (2d Cir. July 3,
1974) Slip Opinions p. 4677. It is

ORDERED that the motion for reargument is denied.

BROOKLYN, NEW YORK
July 30, 1974

S/ JOHN F. DOOLING JR.
U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

IN RE JERRY LANGELLA, A WITNESS

BEFORE THE SPECIAL SEPTEMBER,

1972 GRAND JURY

NOTICE OF MOTION
74 C 638

-----x

S I R S :

PLEASE TAKE NOTICE that upon the annexed Affidavit of GUSTAVE H. NEWMAN duly sworn to the 20th day of September, 1974, the undersigned will move before the Honorable John F. Dooling, a Judge of this Court, at the Courthouse, Cadman Plaza East, Brooklyn, New York, on a date and at a time to be set by said Judge for an order pursuant to Title 28, Section 2255, United States Code, granting the following relief:

1. Releasing from custody at the Federal House of Detention the witness JERRY LANGELLA on the grounds that the sentence imposed in the order of contempt has been completed.

2. For such other and further relief as to the Court may seem just in the premises.

DATED: NEW YORK, NEW YORK
September 20, 1974

Yours, etc.,

GUSTAVE H. NEWMAN
Attorney for Witness LANGELLA
522 Fifth Avenue
New York, New York 10036
(212) MU 2-4066

TO: HON. DAVID TRAGER
United States Attorney
Kings County
35 Tillary Street
Brooklyn, New York
ATT: ROBERT DEL GROSSO, .SPECIAL ATTORNEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

IN RE JERRY LANGELLA, A WITNESS

BEFORE THE SPECIAL SEPTEMBER, 1972

AFFIDAVIT

GRAND JURY

-----x

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS:

GUSTAVE H. NEWMAN, being duly sworn on oath, deposes
and states:

I am the attorney for the witness herein. In such
capacity, I am fully familiar with all of the facts and circum-
stances herein. I make this Affidavit in support of the instant
motion which seeks to release the witness from custody on the
grounds that he has completed the sentence that was imposed
upon him pursuant to an order of contempt.

B A C K G R O U N D

The witness was subpoenaed before a Grand Jury on April 17,
1974. He refused to testify after he was purportedly granted
immunity. On the same date, after the objections to testifying
were overruled, he was directed to testify and when he continued
to refuse to do so he was adjudicated in contempt and committed
to the custody of the United States Marshal. An order of com-
mitment was signed by Judge Dooling and a copy of said order is
hereto annexed and made a part hereof as Exhibit "A".

T H I S M O T I O N

The Grand Jury before whom this witness appeared was the Special September 1972 Grand Jury. It was convened on September 19, 1972 for a period of 18 months. Thereafter and more particularly on March 12, 1974, an application was made to the Honorable Jacob Mishler, Chief Judge of this Court, to extend the term of that Grand Jury. On March 12, 1974, Judge Mishler extended the term of that Grand Jury from the date of expiration of its original term for a period of six months from March 19, 1974. Thus, based on the contempt order as entered, the term of this witness was to expire on September 19, 1974. Thereafter, upon information and belief, application was made to extend the Grand Jury for an additional period of six months and, upon information and belief, that order was signed by the Honorable Jacob Mishler although I have not seen either the application or the order.

Title 28, U.S.C., Section 1826, which deals with recalcitrant witnesses reads in its appropriate portion as follows:

"...No period of such confinement shall exceed the life of--

- (1) the court proceeding, or
- (2) the term of the grand jury, including extensions,

before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months."

At bar, Exhibit "A", which is the order of commitment, refers to the life of the Grand Jury from the date of this order

and does not state that it includes extensions. Thus, based on the literal language of the order, the witness' term as imposed by the formal order of commitment has expired.

The law seems to be well settled that the only sentence known to the law is the sentence or the judgment entered upon the records of the Court. See: Hill v. U.S., 298 U.S. 460, 56 S.Ct. 760 (1936). See also: Miller v. Aderhold, 288 U.S. 206, 53 S.Ct. 325 (1933); Chapman v. U.S. 247 F2d 879 (6 Circ : 1957); U.S. v. Rollnick, 33 F.Supp. 863 (Middle District Pennsylvania : 1940). All of these cases go on to hold that until and unless the judgment which in this case would be the order is corrected in a direct proceeding, it is irrebutably presumed to say what it is meant to say. In this case, it says the life of the Grand Jury and makes no reference to extensions.

The usual way these questions have arisen is when a prisoner or defendant seeks to attack the language of an existing judgment and contends that the oral statement of the Court should control. The Courts have refused to allow this particularly through the format of collateral attack.

In the instant case, we are not seeking to do that. We are urging that the written judgment which pronounced sentence is the one which should be adhered to by the Court. At the sake of anticipation, any attempt by the government to now amend the judgment would be impermissible. The witness LANGELLA has not only started to serve the sentence, but in fact has completed serving the sentence so an amendment would in fact be an increase after the commencement of service. See amongst

other cases: Clark v. Memolo, 174 F2d 978 (District of Columbia : 1949).

In the same vein, it has been held that when a formal judgment is signed by a Judge that is prima facie the decision or judgment rather than any statement in an opinion or any docket entry. See: U.S. v. Hark, 320 U.S. 537, 64 S.Ct. 359 (1944). See Also: Bowles v. Rice, 152 F2d 543 (6 Circ : 1946); Standard Oil v. Clark, 153 F2d 917 (2 Circ : 1947). It is also well settled law that the express recitals in the judgment are what control and create the true import of the judgment. See: Bass v. Hoagland, 172 F2d 205 (5 Circ : 1949), cert. denied 70 S.Ct. 57.

In the event the Court feels that it cannot grant the relief based on the grounds that the time imposed by the judgment has expired, we respectfully request the Court make further inquiry. The nature of that inquiry is as follows: that the Court examine under its general equity jurisdiction whether in obtaining the extension herein, the United States Attorney brought to the attention of the extending Judge the fact that one of the ancillary facts of such extension would be to continue the imprisonment of a witness. In addition to that inquiry, we request that this Court inquire of the government whether the investigation for which this witness was summoned is continuing before this Grand Jury which was extended and is a viable and operative investigation and accordingly, whether in fact this Grand Jury has continued to hear evidence in connection therewith

or whether this investigation is being presented to another Grand Jury and, therefore, the witness would be required to be released on the authority of Shillanti v. U.S., 384 U.S. 364, 86 S.Ct. 1531 (1966). In this last request, it is, of course, axiomatic without the need of citational support that the Court maintains continuing jurisdiction over the Grand Jury.

WHEREFORE, it is respectfully prayed that the relief requested in the instant motion be, in all respects, granted.

GUSTAVE H. NEWMAN

SWORN TO BEFORE ME this 20th
day of September, 1974.

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X

5 UNITED STATES OF AMERICA, :

6 Plaintiff, :

7 -against- : 74-C-638

8 J. LANGELLA, :

9 Defendant. :

10 -----

11
12 United States Courthouse
13 Brooklyn, New York

14 October 11, 1974
15 4:30 o'clock p.m.

16 B e f o r e :

17 HON. JOHN F. DOOLING, JR.,

18 U.S.D.J.
19
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22
23

24 HENRY SHAPIRO
25 OFFICIAL COURT REPORTER

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A p p e a r a n c e s :

DAVID G. TRAGER
United States Attorney
Eastern District of New York

By: FRED BARLOW
Assistant United States Attorney

GUSTAVE NEWMAN, ESQ.
Attorney for Defendant

* * *

1
2 THE CLERK: In re, Mr. Langella.

3 THE COURT: I think we have all the orders.

4 MR. BARLOW: Yes, your Honor. I had the
5 court clerk bring them up.

6 THE COURT: Where did we put them?

7 MR. BARLOW: Your Honor, I have them.

8 THE COURT: Yes, sir?

9 MR. NEWMAN: If your Honor please, most
10 of my argument is contained in the moving papers,
11 and the basis of the argument is rather narrow,
12 in that your Honor's that committed Mr. Langella
13 for failure to answer questions contains the
14 language that he is "hereby committed to the
15 custody of the United States Marshal for the
16 Eastern District of New York for the life of the
17 grand jury from the date of this Order or until
18 such time as he perjures himself of this contempt."

19 In reading the language of the statute,
20 Title 28, U.S. Code, Section 1826, which deals
21 with recalcitrant witnesses, it indicates the
22 period of time for which the confinement shall be,
23 and where it says "the term of the grand jury,"
24 it makes a separate reference to "including
25 extensions."

1
2 What I am indicating, your Honor, is
3 that in view of the fact that this is a judgment
4 of a court which, whatever its purpose, does
5 mandate an imprisonment, then I think it must
6 be construed very strictly, and since it doesn't
7 include extensions, this grand jury, the life of
8 this grand jury has expired and it expired
9 approximately September 17th, September 19th of
10 this past year and I therefore respectfully
11 submit that Mr. Langella is entitled to his
12 release.

13 By the way, Judge, since I brought it as
14 a 2255, the defendant is not before the court.
15 I waive his physical appearance and production,
16 Judge.

17 THE COURT: I thought the marshal was
18 going to bring him over. Do you want to see if
19 he did?

20 MR. NEWMAN: I would think, Judge - -
21 I would tend to think that perhaps they did not
22 because he has a lot of problems walking, so
23 that maybe, you know, they may not have brought
24 him.

25 I will waive his physical appearance,

1
2 Judge.

3 THE COURT: All right.

4 What is your view of the matter, Mr.
5 Barlow? I take it, you do not agree?

6 MR. BARLOW: Obviously not, your Honor.

7 THE COURT: No, it is not necessarily
8 obvious.

9 MR. BARLOW: I think, if the court had
10 not first orally ordered that Mr. Langella was
11 in contempt, and I think the court has the
12 power to do this under Section 1826(a), since
13 the section provides that the court may
14 summarily cite and order the recalcitrant
15 witness into - - as being contemptuous, and if
16 the oral order and the written order memorializing
17 the court's summary order had referred only to
18 incarceration for the term of the grand jury,
19 Mr. Newman may have had an arguable point.

20 However, that's not the case.

21 The court's order down to the next to
22 the last full line puts Mr. Langella's incarceration
23 or notes it as being for the life of the grand
24 jury or until he perjured himself of contempt.

25 Taking the language of the section,

1826 says - - and I'm accepting the first sub-
paragraph, which talks about court proceeding - -
"Since we are only talking about grand jury
testimony, no period of such confinement shall
exceed the life of, two, the term of the grand
jury, including extensions before which such
refusal to comply with the court order occurred
but in no event shall such confinement exceed
eighteen months."

I think it is obvious that life in the
section refers to both the term of the grand
jury and its extensions, and if Mr. Newman's
point is raised to the point of arguability, I
think, at the very most, it's a latent ambiguity
as to what "life" means.

I think then, if there is - - if there
would be such an ambiguity, the court may properly
go back to what - - I think then in order to
resolve any ambiguity - - and I'm just talking
arguendo - - I don't think there is any ambiguity
in the court's order, but if there were, the
court could go back to the minutes of the
proceeding before it when Mr. Langella was cited
for contempt, to find out what the court ordered

1
2 and what Mr. Newman argued on April 17, 1974.

3 Going to pages, I believe, 43 and 44
4 of the minutes for that day - - excuse me,
5 your Honor. It was Pages 44 and 45.

6 In approximately the middle of Page 45,
7 Mr. Newman being aware of Mr. Persico's
8 citation for contempt, referred to Judge Judd's
9 order incarcerating Mr. Persico for sixty days.
10 The court quite properly said that Judge Judd's
11 order was a criminal contempt. This was a civil
12 contempt in the nature of a coercive confinement
13 in order to bring Mr. Langella's testimony out.

14 THE COURT: We do not want the man in
15 jail. We want him to talk.

16 MR. BARLOW: I would be, having taken
17 over at least for the moment for Mr. DelGrosso,
18 I would be very happy if he would talk, your
19 Honor.

20 Excuse me. In Xeroxing the minutes I'm
21 afraid I didn't get the page numbers on the top,
22 so I have them out of context right now.

23 In any event, your Honor, on the bottom
24 of Page 44, after that argument by Mr. Newman,
25 the court stated, "That is treated as a criminal

1
2 contempt which is not what we are doing here.
3 This is intended to obtain testimony, and the
4 commitment is to continue until the witness
5 does testify or the occasion to which he can
6 be commanded has past through the expiration
7 of the grand jury."

8 At some other prior point in the
9 colloquy your Honor referred to "the term and
10 extensions of the grand jury."

11 Just for the purposes of the record, I
12 would have marked as exhibits for the purposes
13 of this hearing the three different orders
14 connected with this grand jury, the first being
15 Judge Mishler's order of September 6, 1972,
16 authorizing the September, '72 special grand
17 jury, and I believe his orders of March 12th
18 and August - -

19 THE COURT: I think the jury was - -

20 MR. BARLOW: The jury wasn't impaneled - -

21 THE COURT: - - established on September
22 6, 1972.

23 MR. BARLOW: Yes, your Honor.

24 THE COURT: And that its term was extended
25 on March 12, 1974 for a period of six months

1
2 beyond March 19, 1974, which would bring it
3 around to September.

4 MR. BARLOW: Yes, your Honor. Then on
5 August 26 - -

6 THE COURT: On August 26 Judge Mishler
7 reluctantly, I know, extended it for a further
8 six months, which would take us around again
9 to March of '75, I expect.

10 MR. BARLOW: Yes, your Honor.

11 THE COURT: If my arithmetic is correct.

12 MR. NEWMAN: I think somewhere along
13 the line you may have - -

14 THE COURT: Three years is the limit,
15 but that would not, therefore, be until
16 September 6, 1975. September 19, 1975, which
17 is small comfort.

18 MR. NEWMAN: They can't do it for more
19 than eighteen months, anyway.

20 MR. BARLOW: That's true, your Honor.

21 MR. NEWMAN: The statute specifically
22 says that they can't do it for more than
23 eighteen months.

24 THE COURT: Yes. You see, but he has
25 been in and the six months seems like a year.

1
2 Six months or so. And he still is indisposed
3 to explain himself. I wish he'd testify.

4 Well, I am afraid that if that is the
5 argument, I cannot go along with it and I
6 cannot think of another one for you.

7 MR. NEWMAN: Well, Judge, as far as the
8 argument itself is concerned, it's actually
9 too faceted. Number one, I wanted to reply to
10 Mr. Barlow for the record.

11 He's taking the position that there is
12 an ambiguity and I would submit, based on the
13 cases that I have cited, that when you are
14 talking about a judgment, the judgment speaks
15 for itself and you can't really go behind it.

16 THE COURT: No. I do not think it is
17 ambiguous myself.

18 MR. NEWMAN: I would think that being as
19 it is, a judgment, it has to be construed strictly,
20 but apparently I need not argue that because you
21 haven't bought, so to speak, the argument of
22 ambiguity.

23 THE COURT: No. I think the life of this
24 kind of grand jury does include its extensions
25 since it's a statutory grand jury. I think that

1
2 the statute itself that we are dealing with,
3 if it is applicable at all - - and we have
4 assumed it is - - is talking originally about - -
5 I think it is obvious from the context, and the
6 language of the statute - - it was talking about
7 the ordinary grand jury, which was normally
8 established for a term.

9 Mr. Langella?

10 THE MARSHAL: Yes, sir.

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20 (Continued on next page.)
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1
2 THE COURT: Sit down, Mr. Langella.

3 Therefore, it was normal thinking of
4 somebody.

5 Now, when I spoke of the life of the
6 grand jury, the statute says "for the term of
7 the grand jury including extensions" and then
8 it goes on to say "at the end of eighteen months"
9 as to make doubly sure. I think the life they
10 are talking about is the life of the grand jury,
11 but in this case not more - - that life so far
12 as this case would be eighteen months. It
13 would have to end eighteen months after the
14 order was entered.

15 In any case, whether the grand jury
16 lingers or not, that is small comfort.

17 MR. NEWMAN: There is a second facet to
18 my motion and that is the aspect of whether in
19 fact the investigation for which Mr. Langella
20 was committed is in fact a viable ongoing
21 investigation.

22 THE COURT: That is the other thing that
23 we are thinking about and again wondering about
24 whether that thinking, which would I think
25 certainly apply under a standard grand jury,

1
2 has application here.

3 It's ordinarily when a regular grand
4 jury has its term extended, it is for the
5 completion of business or ready in hand and
6 unfortunately it is not too clear that that's
7 true of the grand jury of Chapter 216 - - at
8 least I do not think of it that way.

9 Do you have it there?

10 MR. BARLOW: Yes, your Honor.

11 It just says "Business of the grand jury
12 as has not been completed."

13 THE COURT: If you look at the reasons
14 for the establishment of special grand juries,
15 it does not give you any clue.

16 I am afraid that I know what Mr. Barlow
17 would say if he got into that - -

18 MR. NEWMAN: Yes, but my problem is this - -

19 THE COURT: He'd say at any time Mr.
20 Langella wants to talk it could be brought to a
21 close.

22 MR. NEWMAN: I do not think it is posed
23 that way. I was referring to the Chiliano
24 situation.

25 If we start out with the premise it is

1
2 a civil contempt by him being given an option - -

3 THE COURT: Let us get it straight.

4 He is under an order to talk. He has
5 a duty, not an option.

6 MR. NEWMAN: I use the language "option"
7 only in the punitive sense. We are not sending
8 you to jail, Mr. Langella. You in fact have
9 the key, you have an order to talk. The minute
10 you start talking they must let you out of jail.
11 That way the cases talk about distinguishing
12 between civil and a criminal contempt, because
13 in a criminal contempt you have no option, you
14 are sentenced for a wrong, not so-to-speak, to
15 coerce you.

16 If you look at Chiliano , although
17 they held it to be a civil contempt - - if you
18 will pardon the use of the word - - because you
19 have the option aspect. All they wanted there
20 was a witness to testify. They said that
21 witness in the Chiliano case had to be released
22 because the grand jury and the investigation that
23 was being conducted in that case had terminated.

24 THE COURT: I have forgotten what happened.

25 Had they indicted? It was the same sort

1
2 of summary contempt for a better description?

3 Had they indicted the persons who were
4 under investigation or was it something to
5 indicate the closing it?

6 MR. NEWMAN: I see what you are speaking
7 of. I do not know. I do not know why they
8 determined it was closed, Judge, but they
9 determined it was closed. I do not know whether
10 the facts or subjects or targets of the investi-
11 gation were indicted or what reason it was closed.

12 MR. BARLOW: Thinking through my reading
13 of it, I think that is correct.

14 As I remember - -

15 THE COURT: Anyway, to get it right, is it
16 Cerranti (phonetic)?

17 MR. NEWMAN: I do not know.

18 THE COURT: It is Chiliano?

19 MR. NEWMAN: Yes.

20 I apologize, or should I blame it on
21 the ubiquitous secretary, Judge?

22 I am wondering whether Judge Mishler
23 had to be acquainted with the fact that a
24 prisoner is in custody?

25 THE COURT: I would doubt that he was

1
2 specifically told that.

3 MR. BARLOW: I can state for a fact
4 that he wasn't, since I was the person that
5 drafted it.

6 THE COURT: Mr. Langella is the only
7 one in custody. Maybe Mr. Langella knows.

8 MR. BARLOW: There are other people in
9 custody.

10 THE COURT: I mean, on this account.

11 MR. NEWMAN: I do not know.

12 MR. BARLOW: On this investigation he is
13 the only one. Whether there are others
14 incarcerated for contempt before this grand
15 jury, I am trying to think.

16 Yes, there is at least one other, a
17 gentlemen, I believe - - I am sorry, that gentle-
18 man was incarcerated on a Monday which means
19 that he was contemptuous before the special May
20 1972 grand jury.

21 I know there are several others at West
22 Street. Mr. Langella may be the only one from
23 this grand jury - - this special September 1972.

24 It's, of course, the government's
25 position in signing the order to extend the grand

1
2 jury that Judge Mishler had to be aware that
3 the grand jury's business was not over and he
4 was well made aware of that fact, and if your
5 Honor wants a recounting of several of the
6 investigations still pending before that grand
7 jury, I have several on the tip of my tongue.

8 MR. NEWMAN: My question is, does it
9 have to be the grand jury or the investigation?

10 THE COURT: Well, the statute says
11 "the grand jury."

12 Now, the other - - the one where we get
13 our thinking from - - I would guess the thinking
14 of Chiliano - - are the ones that came out
15 under the Columbia statute or the Federal Common
16 Law and there I think the law had become fairly
17 clear-cut that it had to be the very matter on
18 which the man was summoned, because the grand
19 jury was quite impotent to consider anything else.
20 An indictment could be thrown out, which was not
21 a carry-over indictment as it were, but was found
22 on testimony presented to a jury after the
23 expiration of the term and during the period
24 extended on the basis of some other investigation.
25 I think there was a case right on that point, I

1
2 believe.

3 They know a little more about this,
4 if they ever decide that case - -

5 MR. NEWMAN: Your case?

6 THE COURT: I do not want it anymore.

7 The contrasting language is a little
8 different. I think we have to have in mind
9 that the special grand juries at least have
10 been identified in this court with the Task
11 Force and the Organized Crime Unit, as part of
12 the overall 1970 statutes that were intended
13 to implement that particular law enforcement
14 effort, so the difference in language I think
15 was calculated and not accidental. They knew
16 the history.

17 I do not see any comfort for Mr.
18 Langella except start talking. I wish you
19 would, then I could exclude you from my
20 thinking. I do not want to think about you all
21 the time.

22 MR. NEWMAN: Judge, while I am before
23 the Court, I then take it the motion on both
24 grounds are denied?

25 THE COURT: I am afraid so.

1
2 MR. NEWMAN: While we are here and to
3 save some additional time, he has been examined
4 by an orthopedist who found a condition - -
5 I did not bring the letter with me - - but I
6 have a letter which indicates that the condition
7 should be studied in a hospital. I want to save
8 a formal application to have him sent to - -
9 whatever the hospital is in Staten Island or
10 wherever the government's hospital is - - for
11 that condition. I will send a copy of the letter
12 to Mr. Barlow and your Honor.

13 THE COURT: Could you see if you can find
14 that out?

15 MR. BARLOW: Yes, your Honor.

16 I wish the Court to leave the facility
17 open-ended.

18 I ran into this problem once before on
19 a rather needless psychiatric examination of a
20 probation violator and two or three months after
21 he went back into Springfield Hospital we were
22 presented with a bill for \$2,000 from Kings
23 County. I would think that the government may
24 have a cheaper way of doing it than sending him
25 to another jurisdiction's hospital.

1
2 THE COURT: I do not know anything
3 about the Downstate Medical people - - I am
4 sure they are first-rate but I do not think
5 any of us has too much confidence in that hurry-
6 up psychiatric examination over there.

7 MR. NEWMAN: I will forward a copy of
8 the doctor's letter to the Court and to Mr.
9 Barlow on Monday.

10 THE COURT: Then if you can agree on
11 some form of order and find out where the
12 facility is - - I suppose we cannot all go to
13 that one outside Washington.

14 MR. NEWMAN: Mathesda, it is apparently
15 reserved.

16 MR. BARLOW: Thank you.

17 MR. NEWMAN: Thank you.
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
IN RE JERRY LANGELLA, A WITNESS
BEFORE THE SPECIAL SEPTEMBER, 1972
GRAND JURY
-----x

ORDER

OCTOBER 11, 1974

The "life" of the jury includes authorized extensions of that life. Hence, the order continues in effect until that life is over or the witness testifies or 18 months have passed, whichever is first. Since the Grand Jury continues to function, and, under 18 U.S.C. §3331(a), it need not be shown that the particular inquiry in which the witness' testimony is sought is being actively pursued, for the witness' recalcitrance could be the bar to that, the witness may not be released. It is so ORDERED.

S/ JOHN F. DOOLING JR.
U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
IN RE JERRY LANGELLA, A WITNESS

BEFORE THE SPECIAL SEPTEMBER, 1972

GRAND JURY

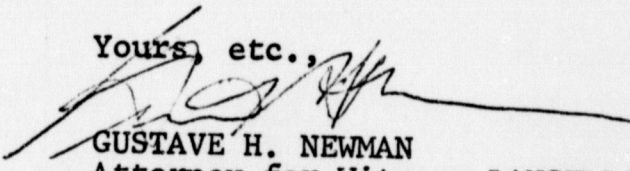
NOTICE OF APPEAL
74 C 638

-----x
S I R S :

PLEASE TAKE NOTICE that the witness JERRY LANGELLA hereby appeals to the Court of Appeals for the Second Circuit of New York from an Order made and entered October 11, 1974 by the Honorable John F. Dooling, Judge of the Eastern District of New York, which order denied the witness' motion pursuant to Section 2255 for release on the grounds that his sentence had expired.

DATED: NEW YORK, NEW YORK
October 16, 1974

Yours, etc.,


GUSTAVE H. NEWMAN
Attorney for Witness LANGELLA
522 Fifth Avenue
New York, New York 10036
(212) MU 2-4066

TO: HON. DAVID TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
ATTENTION: FRED BARLOW, AUSA

Witness JERRY LANGELLA
Federal House of Detention
West Street
New York, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

IN RE JERRY LANGELLA, A WITNESS
BEFORE THE SPECIAL SEPTEMBER,
1972 GRAND JURY.

NOTICE OF MOTION
74 C 638

-----x

S I R S :

PLEASE TAKE NOTICE that upon the annexed Affidavit of
GUSTAVE H. NEWMAN, the undersigned will move before the
Honorable Jacob Mishler, Chief Judge of this Court, at a time,
place and date to be set by said Judge for an Order granting
the following relief:

1. An Order discharging the Special Grand Jury empaneled
on September 19th, 1972 to serve for 18 months and extended on
March 12, 1974 to serve an additional 6 months from March 19,
1974 and extended again to serve an additional 6 months from
September 19, 1974.

2. For such other and further relief as to the Court
may seem just in the premises.

DATED: NEW YORK, NEW YORK
November 5, 1974

Yours, etc.,

GUSTAVE H. NEWMAN
Attorney for Witness LANGELLA
522 Fifth Avenue
New York, New York 10036
(212) MU 2-4066

TO: HON. DAVID TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

ATT: JAMES DOUGHERTY, SPECIAL ATTORNEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
IN RE JERRY LANGELLA, A WITNESS
BEFORE THE SPECIAL SEPTEMBER,
1972 GRAND JURY.

AFFIDAVIT
74 C 638

-----x
STATE OF NEW YORK }
COUNTY OF NEW YORK } SS:

GUSTAVE H. NEWMAN, being duly sworn on oath, deposes
and states:

I am the attorney for the witness herein. In such capacity, I am fully familiar with all of the facts and circumstances herein. I make this Affidavit in support of the instant motion which seeks to discharge the Special Grand Jury.

B A C K G R O U N D

The witness JERRY LANGELLA appeared pursuant to subpoena as a witness on April 17, 1974. After immunity was conferred upon him, he was directed to answer certain questions. He raised various legal challenges and they were overruled. When he persisted in his refusal to answer, he was adjudicated in contempt. He was sentenced to be incarcerated for the life of the Grand Jury or until he answered, whichever event occurred first. Accordingly, he has been in custody since April 17, 1974 without interruption.

The Grand Jury before which he was subpoenaed was the Special Grand Jury empaneled on September 19, 1972 by an order dated September 6, 1972, a copy of the order is hereto annexed and made a part hereof as Exhibit "A". Thereafter on March 12, 1974, based upon an application of Denis Dillon an order was entered extending the Grand Jury for an additional period of six months from March 19, 1974. A copy of the order and affidavit is hereto annexed and made a part hereof collectively as Exhibit "B". Thereafter, and more particularly on August 26, 1974, the Grand Jury was further extended for six months beyond September 19, 1974. A copy of the affidavit and order authorizing the last extension is hereto annexed and made a part hereof collectively as Exhibit "C".

During the period of the witness' incarceration, a series of motions have been made to obtain his release. For the purpose of this motion, I would like to call two of the same to this Court's attention. A motion was made on July 15, 1974 before the Hon. John F. Dooling to set aside the order on the grounds that the application for immunity was not made by the United States Attorney as required by the Statute and as seemingly mandated by In The Matter of Thomas DiBella,

(2 Cir : 1974). That motion was denied. Thereafter, and more particularly, on September 20, 1974, a motion was made by way of Section 2255 for the release of the witness on the grounds that the order of commitment directed his incarceration for the life of the Grand Jury only and did not refer to "extensions" thereof.

That motion was denied by Judge Dooling.

T H I S M O T I O N

This motion is made for the discharge of the Grand Jury.

At the outset, it is submitted that the witness has standing to make this application since by the continuation of this Grand Jury he remains in custody. This Court has jurisdiction to hear this motion since it empaneled the Grand Jury and the Grand Jury remains subject to the supervision of this Court.

See: Branzburg v. Hayes, 92 S.Ct. 2646 (1972); U.S. v. Dionisio, 93 S.Ct. 764 (1973).

It is under that general supervisory power that the witness seeks to employ the Court's authority. The basis is really twofold. Firstly, the order which purports to grant immunity was not applied for as required by the United States Attorney. If the Court feels it is bound by the decision by a coordinate Judge, ie., Judge Dooling, on the earlier motion, then we would ask this Court to determine the next issue, holding, if it deems necessary, a formal hearing on the issues involved.

The order of August 26th, 1974, which extends the Grand Jury and the affidavit which accompanies it are annexed hereto as Exhibit "C", collectively. Examination of those documents clearly indicates that neither of them refer to the incarceration of the witness LANGELLA because of alleged contempt of that Grand Jury. Neither of the documents call to

the extending Court's attention that the extension of the Grand Jury may result in the continued incarceration for an additional six months of a witness who has already been incarcerated for five months. It is not idle speculation to suggest that had these facts been called to the Court's attention, the Court might have made specific inquiries into the investigation then before that body; how far they progressed; the number of other Special Grand Juries then sitting; the feasibility of transferring those investigations to the other sitting Special Grand Juries; etc.

It is apparent that this practice of allowing the Grand Jury to be extended without any notification of the effect on persons in custody could conceivably lead to a situation, although it is not suggested to be so at bar, where a person is subpoenaed during the inception of the life of a special grand jury, he is immunized, the evidence is slight as to a substantive crime, but by his refusal to answer, he could conceivably be incarcerated for as long as 18 months without a trial.

It is respectfully submitted that this was not the purpose of the enactment of Section 3331(a) et seq of Title 18, U.S.C. Although it has been said that the Grand Jury has the right to a person's testimony, the Courts have frowned on roving commission or the use of Grand Juries merely to get a person indicted for perjury. Brown v. U.S., 245 F.2d 549 (8 Cir : 1957).

The Courts have held the Government and Grand Juries to strict observance of the enabling legislation. (See: U.S. v.

Fein, slip opinion, Second Circuit, decided October 15th, 1974 at page 5759, no other citation presently available.

WHEREFORE, it is respectfully requested that the Court discharge the said Grand Jury for failure to be advised of all of the facts attendant to the application for extension or, in the alternative, order a hearing to determine the facts.

GUSTAVE H. NEWMAN

SWORN TO before me this 8th
day of November, 1974.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED

U. S. DISTRICT COURT E.D. N.Y.

UNITED STATES OF AMERICA

-v-

JOHN DOE, et al,
Defendants

★ SEP - 6 1972 ★

JUNE A.M.

P.M.

ORDER FOR A SPECIAL
GRAND JURY

Upon the applications of the United States of America by its duly appointed representative, the United States Attorney for the Eastern District of New York, it is

ORDERED, that, pursuant to Rule 6 (a) Federal Rules of Criminal Procedure, and Title 1, Chapter 216, Public Law 91-452, a Special Grand Jury be convened on or about September 19, 1972 to serve for a period of eighteen (18) months from the date it is convened or until such time prior thereto as an order for its discharge is entered by the court pursuant to law or until such time as its term may be extended pursuant to law.

Dated: Brooklyn, New York
September 6, 1972

James P. Smith
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Exhibit "A"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - -

IN THE MATTER OF THE SPECIAL
SEPTEMBER 1972 GRAND JURY
- - - - -

ORDER EXTENDING TERM OF
SPECIAL GRAND JURY

The United States Attorney having moved for an order pursuant to 18 U.S.C. § 3331(a), extending the term of the above Grand Jury for an additional period of six months and having shown by affidavit made by Dennis E. Dillon, that the business of the Grand Jury has not been completed,

NOW THEREFORE, the court having determined that the business of the Grand Jury has not been completed, it is

ORDERED that the term of the Special September 1972 Grand Jury be and the same hereby is extended for an additional period of six months from the date of expiration of its original term, i.e., March 19, 1974.

Dated: Brooklyn, New York
March 12, 1974


UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

IN THE MATTER OF THE SPECIAL SEPTEMBER,
1972 GRAND JURY

AFFIDAVIT

-----X

DENIS E. DILLON, being duly sworn, deposes and says:

1. That he is the Attorney in Charge, Organized Crime and Racketeering Section, United States Department of Justice.
2. That the original term of the Special September, 1972 Grand Jury is due to expire on March 19, 1974.
3. That the business of that grand jury will not have been completed before the expiration of its' term in that there are several pending investigations requiring presentation of additional evidence before any action can be taken by the grand jury.
4. That voluminous evidence already submitted to the Special September, 1972 Grand Jury will have to be re-submitted to another grand jury if the term of the aforementioned grand jury is not extended.
5. That this affidavit is made in good faith.

Denis E. Dillon

DENIS E. DILLON
ATTORNEY IN CHARGE
ORGANIZED CRIME & RACKETEERING
SECTION
U.S. DEPARTMENT OF JUSTICE

SWORN TO BEFORE ME THIS 12th
DAY OF MARCH, 1974.

Harold Myerson

Notary Public State of N.Y.
No. 31-772360
Queens NY County
March 12, 1974

Exhibit "B"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE SPECIAL
SEPTEMBER 1972 GRAND JURY

ORDER EXTENDING TERM OF
SPECIAL GRAND JURY

The United States Attorney having moved for an order pursuant to 18 U.S.C. §3331(a), extending the term of the above Grand Jury for a second additional period of six months and having shown by affidavit made by Gerard T. Mc Guire, that the business of the Grand Jury has not been completed,

NOW THEREFORE, the court having determined that the business of the Grand Jury has not been completed, it is

ORDERED that the term of the Special September 1972 Grand Jury be and the same hereby is extended for a second period of six months from the date of expiration of its original term, i.e., September 19, 1974.

Dated Brooklyn, New York
August 26, 1974

/s/ Jacob Mishler
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Exhibit "C"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN THE MATTER OF THE SPECIAL
SEPTEMBER, 1972 GRAND JURY
-----X

MOTION

The United States Attorney, by Gerard T. Mc Guire, Attorney in Charge, Brooklyn Organized Crime and Racketeering Section, United States Department of Justice, hereby moves this Court pursuant to Title 18, United States Code, Section 3331(a), for an order extending the term of the Special September, 1972 Grand Jury for a second additional term of six (6) months. In support hereto the annexed affidavit is respectfully submitted.

David G. Trager

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

Gerard T. McGuire

GERARD T. MC GUIRE
ATTORNEY IN CHARGE, BROOKLYN STRIKE FORCE
ORGANIZED CRIME SECTION

Exhibit "C"

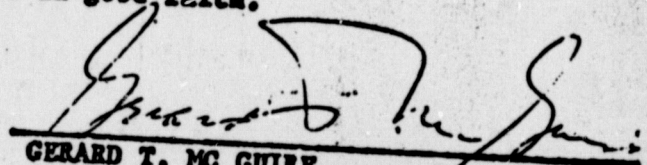
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN THE MATTER OF THE SPECIAL
SEPTEMBER 1972 GRAND JURY
-----X

AFFIDAVIT

Gerard T. Mc Guire, being duly sworn, says:

1. That he is the Attorney in Charge, Organized Crime and Racketeering Section, Brooklyn, New York United States Department of Justice.
2. That the original term of the Special September, 1972 Grand Jury was extended by Order of Honorable Jacob Mishler, United States District Judge, Eastern District of New York on March 12, 1974 for an additional six (6) months, and that the said Special Grand Jury is due to expire on September 19, 1974.
3. That the business of that grand jury will not have been completed before the expiration of its extended term in that there are several pending investigations which were begun during the said grand jury's original term and which require presentation of additional evidence before any action can be taken by the grand jury.
4. That voluminous evidence already submitted to the Special September, 1972 Grand Jury will have to be re-submitted to another grand jury if the term of the aforementioned grand jury is not extended for a second time.
5. That this affidavit is made in good faith.


GERARD T. MC GUIRE
ATTORNEY IN CHARGE, BROOKLYN
ORGANIZED CRIME & RACKETEERING SECTION
U.S. DEPARTMENT OF JUSTICE

Sworn to before me this
16th day of August, 1974.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN RE JERRY LANGELLA, A WITNESS

:
BEFORE THE SPECIAL SEPTEMBER,
: 74 C 638
1972 GRAND JURY.
:
:
-----X

Defendant moves to discharge the Grand Jury empaneled on September 19, 1972, under 18 U.S.C. § 3331(a), and extended by two later orders to a present expiration date of March 19, 1975. The contention is that no basis except a very general statement by the Attorney in charge of the Strike Force underlies the extensions, and the Chief Judge was not advised that the effect of the second extension was necessarily to extend the term during which defendant might remain in custody if he continued in his recalcitrancy.

The statement of continuing business was, indeed, general, but it was unqualified, and that suffices under the statute. In fact, Government counsel were able to mention three continuing investigations the existences of which are public property.

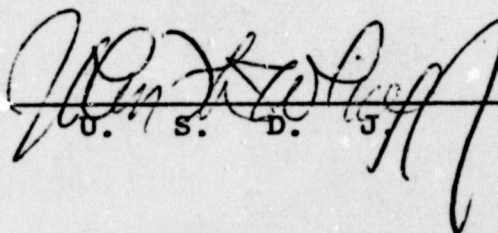
2.

It would, certainly, be the better practice in future to advise the Chief Judge, when seeking to have a Grand Jury extended, what if any persons are in custody on civil contempt commitments the outer limits of which are set by the life of the Grand Jury. It might not be thought relevant to the issue before the Chief Judge, but it might result in Government counsel's being instructed to advise the judge or judges who granted the commitment order or orders that the life of the Grand Jury had been extended. Cf. 28 U.S.C. § 1826(a). It is, therefore,

ORDERED that the motion to discharge the Special Grand Jury empaneled September 19, 1972, is denied.

Brooklyn, New York

November 18, 1974.


U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

IN RE JERRY LANGELLA, A WITNESS

BEFORE THE SPECIAL SEPTEMBER, 1972

NOTICE OF APPEAL
74 C 638

GRAND JURY.

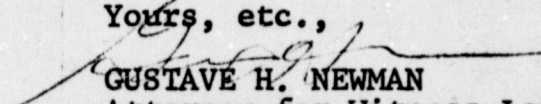
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S I R S :

PLEASE TAKE NOTICE that the witness JERRY LANGELLA hereby appeals to the Court of Appeals for the Second Circuit of New York from an Order made and entered November 18, 1974 by the Honorable John F. Dooling, Judge of the Eastern District of New York, which order denied the witness' motion for an order discharging the Special Grand Jury empaneled on September 19, 1972 to serve for 18 months and extended on March 12, 1974 to serve an additional 6 months from March 19, 1974 and extended again to serve an additional 6 months from September 19, 1974.

DATED: NEW YORK, NEW YORK
November 20, 1974

Yours, etc.,


GUSTAVE H. NEWMAN
Attorney for Witness Langella
522 Fifth Avenue
New York, New York 10036
(212) MU 2-4066

TO: HON. DAVID TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
ATT: FRED BARLOW, AUSA

Witness JERRY LANGELLA
Federal House of Detention
West Street
New York, New York